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CURRENT TOPICS

Accident Claims

ON 3rd May the House of Lords debated industrial accident claims on a motion by LORD ROCHDALE, who drew a picture of employers and insurance companies being "obviously tempted" to cut their losses and to settle cases which it would be costly to oppose. He said that the core of the whole matter was that an employee suing his employer would apply for assistance under the Legal Aid and Advice Act and would sue as an assisted person, whereas the employer or the insurance company acting on his behalf would defend without such assistance. In fact, of course, a very large proportion of actions and claims brought by employees against their employers are not conducted with the assistance of the Legal Aid and Advice Act at all but are conducted by solicitors instructed by trade unions. It is not correct to blame the Legal Aid and Advice Act for any substantial increase in the number of claims by employees, and in any event, as the LORD CHANCELLOR mentioned in the course of the debate, 86 per cent. of the cases brought by assisted persons are successful. It is true that greater justice would be done if the Legal Aid Fund were called upon to pay the costs of unsuccessful assisted persons, but all the evidence goes to show that the certifying committees do their work extremely well and that the additional safeguards against baseless claims which were recently introduced remove a large part of any grievance there may have been. In passing, it should be noted that the practice of trade unions in paying the costs of successful defendants varies. Some unions pay these costs without demur, while some do not pay them at all or only under pressure. During the course of the debate the Lord Chancellor mentioned that, whereas the present moment is not propitious to obtain additional sums of money from the Treasury in order to start the legal advice scheme, The Law Society are considering whether they cannot find a better and cheaper method than they thought of at first. Our readers will recall that we have advocated in these columns a scheme which would be operated very largely by and through the profession itself and we look forward to hearing the conclusions which the Council of The Law Society reach.

An Offensive Article

AFTER the damage had been done, the Press Council at a meeting on 1st May considered the action of the *Sunday Express* in publishing matter defamatory of The Law Society and damaging to the legal profession. The Council of The Law Society had protested to the Press Council. The editor

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of the *Sunday Express* considered that publication of a letter on the following Sunday rendered no further action necessary. The Press Council have now published a statement maintaining the freedom of the Press to attack other professions. The article, it was said, did not constitute a breach of journalistic ethics, provided that it was fair and accurate. In view of the scale of the newspaper's attack on the whole profession, the council felt that The Law Society would be justified in making a request to the editor to give space for an article or a statement by the secretary or other spokesman of The Law Society, giving the public their side of the picture. The council considered that if such a request is made the editor ought to grant it. The article was, as we said when it was published (*ante*, p. 39), offensive. The only possible amends would be to print an article equal in length and prominence to the defamatory matter. It should have been done long ago.

Non-Existent Document

By a variety of well-known practical tactics it is possible to adduce in evidence the contents of a document of which the original is not available to the litigant desiring to put it forward. If the document is in the keeping of some other person a subpœna *duces tecum* will compel him to produce it, and in a civil case such a subpœna may be served on the other party to the proceedings. But there is a simpler way of getting in the document when the party himself has a copy or can otherwise bring secondary evidence of the contents of a document in his opponent's possession. He can give notice to produce the document, whereupon, if the notice is not complied with, such secondary evidence becomes admissible. A copy or an oral account of what is contained in the document is also admissible if there is evidence before the court that the original has been lost or destroyed. What if there is no such copy, or if only the opponent knows what the original contained? Discovery will not help unless the original or a copy is in the opponent's possession or power. A way out is suggested by the decision of Davies, J., in *Ramsey* v. *Ramsey* [1956] 1 W.L.R. 542; *post*, p. 361, in which his lordship held that the court had power in a proper case to allow interrogatories as to the contents of a document shown to have been lost or destroyed to be administered to a party who could have been asked the same question in court. In the case before him the learned judge declined to exercise that power because he took the view that the documents in question were not necessary for the establishment of the applicant's case on the pleadings; nor was the interrogatory necessary for disposing fairly of the case or for saving costs.

The Public Trustee

No Government grant is to be made to cover the loss incurred by the Public Trustee in administering estates of low value. The Attorney-General made this announcement in a written reply in the Commons on 2nd May, the suggestion that such a grant should be made having been put forward in a report published on the same day by a committee of inquiry into the Public Trustee office. The committee recommended the amalgamation of the Manchester office and the London office of the Public Trustee, and the Government accepted this proposal. The Attorney-General announced that the branch office at Manchester is to be closed as soon as practicable, resulting in a substantial saving in costs. The committee found that the net result of somewhat abrupt alternations of profit and loss is a deficit, throughout the years, of £187,145 on trustee work. The Public Trustee's cash transactions with the Exchequer during forty-seven years showed a balance in the office's favour of approximately £380,000. The committee recommended that the Public Trustee should undertake an advertising programme in order to attract remunerative business. They further recommended that the property advisers' section of the office be wound up as soon as possible, and that the Public Trustee should follow the usual practice of trustees by consulting professional agents outside his office.

Deaths from Industrial Accidents and Diseases

The Home Office has issued to coroners a consolidated circular (H.O. No. 40/1956) to replace previous circulars on deaths from industrial accidents and diseases. So far as a death due or suspected to be due to an accident, poisoning or disease, notice of which is required to be given to a Government department or to any inspector or other officer of a Government department under or in pursuance of any Act, is concerned, an inquest by a coroner's jury is necessary. The ten cases where such notice is required are set out in the third appendix to the circular, but, as the circular points out, industrial diseases are not a clearly defined class and pneumoconiosis, a term including silicosis, asbestosis, anthracosis and byssinosis, though considered to be a group of possibly occupational diseases, are not notifiable. None the less these diseases are the subject of investigation by coroners. The practice in such cases where the death is suspected to be due to one of the group is, whether or not the medical attendant has given his opinion that the death was caused by or materially contributed to by the disease, for the coroner to order a post-mortem examination by a pathologist with suitable qualifications and experience and having access to laboratory facilities (see Coroners Rules, 1953, r. 3). Though the circular does not make any radical changes in procedure, it conveniently consolidates for quick reference the previous provisions relating to deaths from industrial accidents and diseases.

Modification of Development Plans

According to the Town and Country Planning Association's written evidence last week to the Committee on Administrative Tribunals, a draft development plan may be modified in an important detail without those affected having an opportunity to put their points of view to the Minister of Housing and Local Government. They state that an objector may persuade the local planning authority to agree to his objection and then, at the public inquiry, make his case to the inspector for the Minister's benefit, and the local planning authority offer no opposition. If the Minister then modifies the plan in accordance with the agreed objection, neighbouring owners and interested bodies may have been prejudiced. In both cases the inquiry should be re-opened after republication of the Minister's proposals or the agreed objections, as the case may be. Where other Government departments are interested in a planning inquiry they should put their views before it in the same way as any other interested party. The Association described the practice of departments privately representing their views to the Minister as "entirely reprehensible."

Taxation

THE FINANCE BILL

THE new Finance Bill contains a number of provisions relating to customs and excise, to purchase tax, income tax, profits tax, death duties and stamp duties, but it is thought that readers' most immediate interest may be in the proposal for the provision of retirement benefits for those, either employed or self-employed, who at present have no pension rights, and we will therefore deal with this matter first.

Retirement benefits

The general scheme follows that recommended by the Millard Tucker Report, that is, that premiums may be paid for the purchase of deferred annuities and pensions and, in effect, charged against the profits or remuneration in computing the individual's taxable income. The proposals will here be discussed under three principal headings: the type of benefit which may be so purchased, the amount and nature of the relief allowed upon the premiums and the treatment of the premiums and interest thereon in the hands of the persons writing the annuities. These categories correspond to cll. 18, 19 and 20 of the Bill.

The type of benefit

The general conditions are that the benefit must take the form of an annuity on the life of the individual to start at some age, to be chosen by the individual, not less than 60 years nor more than 70 years and that such annuity must not be capable, in whole or in part, of surrender, commutation or assignment. Nevertheless there are exceptions to these general rules; thus the annuity may commence at an age earlier than 60 in the event of the individual becoming incapable through illness of mind or body of carrying on his occupation, and in cases where the occupation is one in which persons customarily retire before attaining the age of 60, then, independently of any illness, the annuity may commence at some age not earlier than 50 years. It is also provided that, whilst in the ordinary way the annuity must be upon the life of the individual, it may instead be limited to continue during his life or for a fixed term certain not exceeding five years, whichever may be the longer, and may be limited to determine or be suspended on marriage or remarriage or in other circumstances. Some of these variations may be approved only subject to such conditions as the Commissioners of Inland Revenue may think proper to impose.

Although the principal benefit is to be an annuity to the individual concerned, the benefits may include an annuity to the individual's widow or widower, or, with the consent of the Commissioners of Inland Revenue, to a dependant other than the widow or widower. Such annuities must not be of a greater amount than that paid or payable to the individual himself and must not be limited for any term other than the life of the annuitant. Benefits are not to be excluded from the scheme by reason of a provision for return of premiums with or without interest and bonuses thereon in the event of no annuity becoming payable in the events which happen, and benefits may be provided either by a contract with a person carrying on in the United Kingdom the business of granting annuities on human life, that is to say, an assurance office, or by means of a trust scheme approved by the Commissioners of Inland Revenue.

The relief to be obtained

The principle of granting relief is that in any year of assessment the amount payable by way of premium for the purchase of such benefits as are mentioned above may be deducted from, or set off against, the individual's "relevant earnings" for the year of assessment in which the premium is paid. By cl. 19 (3) a provision is made whereby, if the individual does not receive notice of assessment of his relevant earnings more than six months from the end of the year of assessment concerned, he may claim an extended time of six months from the date on which the assessment becomes final and conclusive in which to pay the premium. This is necessary because the amount of premium qualifying for relief is limited to the lesser of £500 or one-tenth of the individual's "relevant earnings" for the year of assessment concerned. It may well be that the individual will wish in each year to pay as a premium the maximum amount upon which he can obtain relief and no more, and he will be unable to do so if the amount of his earnings for the year is in dispute.

"Relevant earnings" are defined in cl. 18 (7) and, generally speaking, include all remuneration from an office or employment other than a pensionable office or employment and all income derived by the carrying on or exercise of any trade, profession or vocation; certain income relating to the exploitation of patent rights is to be treated as earned income but not any remuneration as a director of an investment company of which the individual is a controlling director. Clause 19 contains numerous provisions for taking into account or, as the case may be, not taking into account various capital allowances, loss claims payments charged upon the individual's income, etc., and since those provisions are as clear as any provisions in a Finance Bill are likely to be there is little point in summarising them here.

The taxation of the premiums

It will be remembered that the principle which was recommended by the Millard Tucker Committee was that all benefits which might be payable under a pension scheme should be taxable, and it is for this reason that it is provided as mentioned above that the benefits must in general take the form of non-assignable or non-commutable annuities. The Committee also recommended, however, that if the benefits were to be taxable the build-up of the fund out of which they were to be paid should be free of tax, and effect is given to this recommendation by cl. 20 of the Bill. The details and mechanics of that clause will be of interest mostly to those concerned with the taxation of assurance companies and for present purposes it is sufficient to say that in general the income received from premiums and from the investments representing premiums paid for such benefits as we are now discussing will be free of income tax in the hands of the company.

Other income tax provisions

Purchased annuities

As is very well known, one of the great disadvantages of purchasing a life annuity has been that, whilst each payment of the annuity commercially and economically amounts to a return of the annuitant's capital which he has invested in its purchase, yet income tax is chargeable upon the whole

of each instalment and not only upon the income element thereof. In order to overcome this it has become usual when an annuity is to be purchased to purchase not a whole life annuity, but rather a fixed term annuity to last for about the average expectation of life of the annuitant and a deferred life annuity to commence on the expiration of the first one. The advantage of this is that, unlike a whole life annuity, the instalments of a fixed term annuity can for taxation purposes be broken down into a return of capital and an income element and income tax is payable only on the latter.

It is now proposed by cl. 22 of the Bill that where an annuity is purchased for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life, that is to say, where an annuity is purchased from an assurance company as distinct from, say, the sale of a business or the transfer of goodwill in a partnership in return for a life annuity, then the instalments of the annuity may be broken down as therein provided into a capital and an income element so that income tax may be payable only on the latter.

It is to be emphasised that, since the principle of the retirement benefits mentioned above is that, as a price for allowing the premiums to be deducted in computing the individual's tax, the benefits provided must be taxable in full, the present provision for breaking down annuity instalments into income and capital does not apply to annuities purchased under such a scheme.

Savings bank interest

It is proposed by cl. 8 that interest on deposits in the Post Office Savings Bank or on ordinary deposits with a Trustee Savings Bank shall, up to a limit of £15 per annum, be exempted from income tax but not from sur-tax. The limit of £15 is to be applied separately to a husband and to a wife so that between them they can enjoy such interest free of income tax up to £30 per annum. In order to give effect to the charge to sur-tax it is provided that in so far as one's taxable income is reduced for income tax purposes by reason of the exemption of such interest it shall for sur-tax purposes be increased not only by the amount of interest received, but by the amount which, after deduction of tax, would have amounted to the interest received, that is to say, if a person liable to sur-tax receives such interest amounting to £15 per annum he will pay no income tax on it, but he will pay sur-tax not on £15 per annum, but, with standard rate at 8s. 6d., on £26 per annum. In the case of a taxpayer liable at the highest rate of sur-tax he will, instead of paying £7 10s. in sur-tax and £6 7s. 6d. in income tax, pay £13 in sur-tax, a saving of 17s. 6d. a year.

Delayed remittances of overseas income

Where overseas income is taxable upon the " remittance " as distinct from the " arising " basis considerable hardship may be caused, having regard to the progressive rates of United Kingdom income tax, when income which appertains to one year cannot, by reason of the laws or currency regulations of a foreign country, be remitted to the United Kingdom in the year in which it arose, so that income appertaining to more than one year may be remitted here in a single year, thus increasing the taxpayer's income for that year. Clause 11 proposes certain machinery to enable a taxpayer in those circumstances to spread back the income to the years in which it is, as it were, commercially attributable.

Investment allowances

It will be recalled that the virtue of the investment allowance, as distinct from the initial allowance, which may be granted upon the acquisition of new capital equipment is that the former is not deducted in computing the wear and tear allowances for subsequent years whilst the latter is so deducted. The investment allowance is in truth an additional allowance so that in theory the taxpayer ultimately receives relief upon 120 per cent. of the value of the asset, whilst the initial allowance is merely an anticipation of wear and tear allowances, or, as it has been called, an interest-free loan by the Government.

It is proposed by cl. 12 that investment allowances shall be suspended and consequentially initial allowances given instead in the case of expenditure incurred after the 17th February, 1956. Exceptions are made in the case of expenditure on the provision of ships or industrial buildings or structures or plant to the extent that such latter expenditure is directed to the interests of fuel economy. It is to be observed that the proposal is not that investment allowances should be abolished entirely but that they should be suspended until some unspecified day. Accordingly, one may hope that some day they will be restored just as one may hope that some day post-war credits will be repaid.

Clauses 13 and 14 are concerned with the grant of capital allowances on expenditure incurred in cutting and tunnelling and on expenditure incurred on dredging. It is not thought that either of them are of very general interest.

Tax on unadministered estates

Part XIX of the Income Tax Act, 1952, provides an elaborate procedure whereby the income of an unadministered estate, which is in law the income of the personal representatives and of no one else, is, by a long procedure of adjustments, deemed to be the income of the beneficiaries in the estate. To the extent to which beneficiaries are liable at the same rate of tax as the personal representatives, that is to say, standard rate, the provisions can be and are ignored: to the extent to which, by reason of personal or other reliefs or by reason of sur-tax, the beneficiary is liable at a lesser or greater rate than standard rate it is necessary to apply these provisions.

Part XIX contains involved directions as to what shall be regarded as the income of a beneficiary absolutely entitled to a share in the residue of an estate and it suffices for the present purposes to say that that figure might include income which had accrued before the death of the deceased so that it fell to be included in estimating the value of his estate for estate duty purposes. Where the beneficiary was chargeable with sur-tax the result might be that that income would suffer estate duty at rates up to 16s. in the £, plus sur-tax at rates up to 18s. 6d. in the £. Clause 15 contains provisions designed to alleviate this position.

Foreign employments

Some of the most far-reaching changes proposed in the Bill concern the method of taxing the emoluments of employments having some overseas element. Until now it has been well established that the locality of an employment depends in the main upon the place where the contract of employment was made and where the salary or wages are payable. An example will make this clear: if an English company employed an Englishman by an English contract to perform certain services in return for a salary expressed in sterling

and payable in London, that would be regarded as an English employment notwithstanding that the employer wished the services to be performed in some part of the world other than the United Kingdom. Having regard to the whole circumstances of the contract and to the fact that the salary is paid in the United Kingdom and to the fact that in the case of any disputes it is the United Kingdom courts which will be called upon to decide them, one cannot but feel that the present position is sensible and logical. Conversely, if an American company employs an American under an American contract for a salary expressed in dollars and payable in New York, that is treated as a foreign employment, so that although the work is performed in London the emoluments are not subject to United Kingdom tax except and in so far as they are brought to the United Kingdom and are so available for spending and investment here ; that again would seem to be logical.

A completely new system of taxing employments home and foreign is now provided. Schedule E is to be divided into Case I, Case II and Case III, and all employments home or foreign are as from the year of assessment 1956–57 to be taxed under one or other of those cases and are not to be taxed under Case V of Sched. D. The basis of taxation depends primarily not upon where the money is paid or is available for spending nor upon the nationality or domicile of the parties nor upon the proper law of the contract, but merely upon where the work happens to be performed. It also depends, as indeed it always did, upon questions of residence, but perhaps to a greater degree than formerly it depends upon drawing a nice distinction between residence and ordinary residence. It is not proposed to discuss that distinction here because, indeed, there are few, if any, persons who would be prepared to venture a suggestion as to what that distinction is. The measure of taxation under the new proposals will be as follows :—

(i) Where the employee is resident and ordinarily resident in the United Kingdom the charge extends to the whole of the emoluments unless the duties are performed wholly outside the United Kingdom and in addition extends to any emoluments which are remitted to the United Kingdom to the extent that they are not caught by reason of the duties being performed partly within the United Kingdom.

(ii) Where the employee is resident in the United Kingdom but is not ordinarily resident in the United Kingdom the charge extends to emoluments in respect of duties performed in the United Kingdom whether remitted to this country or not and emoluments actually remitted to the extent that they are not caught by reason of being in respect of duties performed in the United Kingdom.

(iii) In the case of employees or office holders not resident in the United Kingdom whether they are ordinarily resident or not the charge extends to emoluments in respect of duties performed in the United Kingdom but does not extend to remittances of emoluments in respect of other duties.

It is provided that where there is any dispute as to whether a person is or is not ordinarily resident it should be determined in the first place by the Commissioners of Inland Revenue, but an appeal will lie to the Special Commissioners who shall hear and determine the matter in the same way as an appeal against an assessment under Sched. D.

It is proposed by cl. 10 that where a person performs the duties of an office or employment entirely outside the United Kingdom and where, immediately before that state of affairs occurred, he was either resident or ordinarily resident in the United Kingdom, the question whether he is resident in the United Kingdom whilst so performing the duties of that employment is to be decided without regard to any place of abode maintained for his use in the United Kingdom. This is designed to meet the case of the man who, having been resident in the United Kingdom, takes up an office or employment abroad, returns to the United Kingdom for perhaps a week-end or a period of annual leave, and is held to be resident because he has maintained a home in the United Kingdom, very often for the use of his family, but to which he can resort if necessary.

Profits tax

There are some amendments to the profits tax which like most things connected with the profits tax are of a highly technical nature, and it is not thought that they will be of very much interest to the general reader. Suffice to say therefore that it is proposed that the effect of a grouping notice as between holding companies and subsidiary companies shall be altered so that, putting the matter very generally, the profits of a subsidiary company will not be regarded as the profits of the holding company unless the profits of the holding company are themselves subject to profits tax. In short the proposals are designed to reverse the decision of the Court of Appeal in *Heelex Investments, Ltd.* v. *Inland Revenue Commissioners* [1955] 1 W.L.R. 289 ; 99 Sol. J. 204.

The other amendment to the profits tax which is proposed is to provide that the exemption from distribution charge of sums applied in reducing the capital of a company or in repayment of loans shall not apply to a greater extent than the nominal value of the paid-off capital or the amount of the loan, as the case may be. That is to say the amendment is designed to reverse the effect of the decision of the House of Lords in *Inland Revenue Commissioners* v. *Universal Grinding Wheel Co., Ltd.* [1955] 2 W.L.R. 892 ; 99 Sol. J. 274, a decision which seems to have shared with *Inland Revenue Commissioners* v. *Heelex Investments, Ltd.*, a certain degree of unpopularity in official circles.

Death duties

Settled properties burdened with an annuity

It sometimes happens that property is settled to pay an annuity and subject thereto to be held for *A* for life with remainders over. If the annuity should be payable to *A* himself it is clear that it will come to an end on his death and the whole settled fund will pass. It may be however that it is payable either to the remaindermen or to a third person so that in either case it will continue after the death of *A*, and the question arises how far its existence affects the estate duty payable. The case of an annuity payable to the remainderman was considered in *Re Lambton's Marriage Settlement* [1952] Ch. 752, where it was held that estate duty must be payable on the whole settled fund notwithstanding that the remainderman was richer only by the difference between the annuity and the total income produced. The case of an annuity payable to a third party was considered in *Re Longbourne's Marriage Settlement* [1952] 2 T.L.R. 818, where it was held that the whole property passed, but the Crown conceded that there must be some deduction in respect of the annuity as representing a burden on the property. It is proposed that this generally unsatisfactory position be rectified by enacting that where, by a settlement not made by the deceased, property is limited to pass upon the deceased's death and there is payable out of the settled funds an annuity limited to cease on another death, then in computing the quantum of the funds which pass upon the first death a

deduction may be made on account of the annuity, such deduction to be computed upon the "slice" principle, that is to say, it will equal the proportion of the settled funds necessary to produce the annuity having regard to the income in fact realised upon them.

There are various consequential provisions to ensure that the effect of the proposals will not go further than necessary.

Compulsory purchases

It sometimes happens that after land or an interest in land has been valued for the purpose of estate duty and after estate duty has been paid upon the value so agreed the land is either compulsorily acquired or is sold under threats of compulsory acquisition and in either case for a figure considerably lower than that at which it was valued for duty purposes. Clause 28 proposes that where such a compulsory acquisition or such a sale occurs within three years of the death, then in some rather circumscribed cases and in particular where the land at the time of its acquisition or sale was beneficially owned by the same persons as owned it immediately after the death, an adjustment can be had in the amount of duty payable in respect of that interest by a repayment or remission of duty so that the net amount does not exceed the amount which would have been payable in respect of the interest had it been valued at the amount of the compensation or sale price. It does not appear that there is any provision for adjusting the amount of duty paid in respect of other assets of the estate, where that amount of duty has been increased by reason of the excess value placed on the land having been sufficient to increase the rate of duty payable upon the whole estate.

Works of art, etc.

Clause 29 proposes certain amendments to the powers of the Commissioners of Inland Revenue to accept works of art in satisfaction of duties and certain extensions to the provisions relating to the sale of such works of art.

Stamp duties

Reduced rates

Clause 30 proposes to reduce the stamp duties on a conveyance upon sale or conveyance operating as a voluntary disposition *inter vivos* (in either case a conveyance or disposition other than of stock or marketable securities) in cases where the consideration or value as the case may be does not exceed £5,000 and the document bears an appropriate certificate.

The reduced rates as from the 1st August, 1956, will be :—

Consideration not over	£3,500	10s. per cent.
over £3,500 and ,, ,,	£4,250	£1 ,, ,,
,, £4,250 ,, ,, ,,	£5,000	30s. ,, ,,
,, £5,000		£2 ,, ,,

Annuity contracts

Clause 31 proposes that assurance offices or others granting annuity contracts may make arrangements with the Commissioners of Inland Revenue for the payment of stamp duty thereupon by periodical accounts rather than by impressed stamps in the usual way.

Miscellaneous

There are provisions relating to income tax and estate duty on Indian, Pakistan and Colonial pensions and relating to Exchequer advances to nationalised industries. In this part of the Bill the only clause of any general interest is cl. 35 which provides firstly, that securities may be issued under the National Loans Act, 1939, providing for payments other than principal and interest and secondly, that nothing in any enactment relating to lotteries shall apply to any securities issued under the National Loans Act, 1939. This of course is to prepare the way for premium bonds and it is perhaps a suitable final comment on a Finance Bill of some sixty pages that successive Governments have now got the system of income tax and sur-tax to such a pass that the Government itself has to provide the possibility of tax-free gains in order to encourage the taxpayer to lend money to it.

G. B. G.

ATTEMPTING THE IMPOSSIBLE

CAN one be convicted of attempting to commit an offence which cannot be committed? According to a contemporary, a magistrate recently thought not when a man was charged before him with attempting to steal a suit-case at King's Cross Station. The suit-case had been entrusted to the left-luggage office and the owner lost the ticket. The defendant told the police that he had been given the ticket by a man in a public house. Before he claimed the case, the owner had already taken it out, and when the attendant questioned him he ran away. The magistrate held that as there was no suit-case to steal when the defendant presented the ticket, he could neither steal it nor attempt to steal it. The correctness of the decision is open to some doubt. Curiously enough the leading authority on the point, *R.* v. *Ring and Others* (1892), 17 Cox C.C. 491, also arose from events which occurred at King's Cross Station. "Some females," said a witness, "were entering a third-class compartment. I saw the three prisoners get behind these women. I saw Atkins trying to find one woman's dress pocket." With the voluminous millinery favoured in the nineties, this presumably was no easy matter, and, from a careful study of the report, the prosecution seems to have failed to establish (*a*) whether the "females" had any pockets; (*b*) if so, whether the pockets were ever found; and (*c*) if they were found, whether there was anything in them to steal. However, the five judges led by Coleridge, C.J., were unanimous in holding that the conviction was right and Professor Kenny drew from it the proposition that "an attempt to do what is impossible may be indictable."

The anomalous position of the law with regard to attempts to procure abortion is summarised in the headnote to *R.* v. *Brown* (1899), 63 J.P. 790. "A person who incites a woman to administer to herself a thing that, to his knowledge, is not in fact noxious or capable of procuring abortion, but which he knows she will take in the belief that it is capable of procuring abortion, is not guilty of inciting her to attempt to commit the crime within the meaning of the Offences against the Person Act, 1861, s. 58.

"But the woman who takes the thing, in the belief that it is capable of procuring abortion, though in fact it is not capable of so doing, is guilty of attempting to commit the crime."

F. T. G.

ADMINISTRATIVE PROCEDURES

OUSTER OF THE JURISDICTION OF THE COURTS—II

THE object of this part of the article on the *East Elloe* case [1956] 2 W.L.R. 888; *ante*, p. 282, is to examine in some detail the reasoning which led to the substantial divergence of opinion in the House of Lords mentioned in the first part of the article, *ante*, p. 329.

It will be remembered that the case turned on the interpretation of paras. 15 and 16 of Pt. IV of Sched. I to the Acquisition of Land (Authorisation Procedure) Act, 1946, which lays down the machinery in most common use for the compulsory acquisition of land by local authorities. As a preliminary to a discussion of the reasoning of the Lords of Appeal it is necessary to set out the relevant statutory provisions in greater detail than was done in the first part of the article.

The statutory provisions

Section 1 (1) of the 1946 Act provides that:—

"The authorisation of any compulsory purchase of land . . . by a local authority . . . shall, subject to the provisions of this and the next following section, be conferred by an order (in this Act referred to as a 'compulsory purchase order') in accordance with the provisions of the First Schedule to this Act (being provisions which, subject to certain adaptations, modifications and exceptions, correspond with provisions as to the authorisation of the compulsory purchase of land of the Local Government Act, 1933)."

In Pt. IV of Sched. I are to be found the important paras. 15 and 16, which read as follows:—

"15.—If any person aggrieved by a compulsory purchase order desires to question the validity thereof, or of any provision contained therein, on the ground that the authorisation of a compulsory purchase thereby granted is not empowered to be granted under this Act . . . or if any person aggrieved by a compulsory purchase order or a certificate under Part III of this Schedule desires to question the validity thereof on the ground that any requirement of this Act or of any regulation made thereunder has not been complied with in relation to the order or certificate, he may, within six weeks from the date on which notice of the confirmation . . . of the order or of the giving of the certificate is first published . . . make an application to the High Court, . . .

"16.—Subject to the provisions of the last foregoing paragraph, a compulsory purchase order or a certificate under Part III of this Schedule shall not . . . be questioned in any legal proceedings whatsoever . . ."

To complete the picture of the statutory provisions it should be mentioned—

(1) that the provision of the 1933 Act (referred to in subs. (1) of s. 1 of the 1946 Act above) corresponding to para. 15 did not particularise the grounds on which application might be made to the court; it simply provided: "If any person aggrieved by a compulsory purchase order . . . desires to question its validity, he may, within two months after the publication of the notice of confirmation . . . make an application for the purpose to the High Court . . ." ;

(2) that s. 1 (2) and Pt. III of Sched. I to the 1946 Act provide that compulsory purchase orders affecting certain special types of land, e.g., operational land of statutory undertakers, but not including the ordinary land of a private individual, shall be subject to special parliamentary procedure unless the appropriate Minister has given a certain certificate.

Contentions of the parties

The appellant contended that bad faith was not one of the grounds on which an application could be made under para. 15, and that as it was inconceivable that Parliament would have precluded entirely any challenge of an order on the ground that it was made in bad faith, para. 16 excluding the ordinary jurisdiction of the courts must be read as applying only to orders made in good faith. The respondents contended that whether or not bad faith was a ground upon which an application could be made under para. 15, para. 16 completely ousted all other jurisdiction of the courts.

Interpretation of para. 15

As mentioned in the first part of the article, Lord Morton of Henryton, Lord Reid and Lord Somervell of Harrow were of the opinion that an order could not be challenged under para. 15 on the ground that it had been procured in bad faith or by fraud.

There are, as will be seen above, two grounds of challenge under para. 15, but Lord Morton was of the opinion that the wording of both grounds restricted "the complainant to alleging non-compliance with some requirement to be found in the relevant statutes or regulations. If para. 15 had been intended to apply to cases of bad faith, surely the restrictive words 'on the ground that,' etc., would have been left out in both parts." He was fortified in this conclusion by comparing the wording of para. 15 with the corresponding provision in the 1933 Act, which contained no such restrictive words. "It is, I think, inconceivable that, if the Legislature had intended para. 15 to cover cases where bad faith was alleged, it would have made this striking alteration in the language of . . . the 1933 Act." He then went on to add, as a further reason for coming to his conclusion, that "if para. 15 had been intended to cover such cases [i.e., of bad faith], there would seem to be no good reason why the earlier part thereof should not have been applied to a certificate as well as to an order, since the later part applies to both." This observation arises from the fact that if bad faith comes within para. 15 at all it must come under the first ground of application.

Lord Reid also could see no possible reason for the change in wording between the 1933 provision and the 1946 provision other than an intention to limit the grounds of application. He then divided into four classes the cases in which the courts, apart from any statutory restriction, could give relief, namely: (1) informality of procedure; (2) *ultra vires*, in the sense that what was authorised by the order went beyond what was authorised by the Act under which it was made; (3) misuse of power in *bona fide*, i.e., when an authority in exercising a statutory discretion have not had regard to matters to which they were required to have regard, or have had regard to irrelevant matters, or have come to a conclusion so unreasonable that no reasonable authority could have come to it; and (4) misuse of power in *mala fide*. He said: "In the last two classes the order is *intra vires* in the sense that what it authorises to be done is within the scope of the Act under which it is made, and every essential step in procedure may

have been taken: what is challenged is something which lies behind the making of the order." Dealing with cases of the third class, he said: "No doubt in one sense it might be said that in none of these cases is authority 'empowered to be granted,' but that would be a strained and unnatural reading of these words only to be accepted if there were in the Act some clear indication requiring it. But, to my mind, all the indications are the other way, and this part of the paragraph only refers to cases of *ultra vires* in the narrow sense in which I have used it." He concluded, therefore, that these cases were not challengeable under para. 15, and that cases of misuse of power in *mala fide* were equally excluded.

Lord Somervell said that no party would be allowed to raise fraud under an allegation of *ultra vires simpliciter*. "The words of para. 15 are plainly appropriate to *ultra vires* in the ordinary sense. They do not in their ordinary meaning, in my opinion, cover orders which 'on the face of it' are proper and within the powers of the Act, but which are challengeable on the ground of bad faith."

Lord Radcliffe, on the other hand, read the words "not empowered to be granted" in para. 15 "as covering any case in which the complainant sought to say that the order in question did not carry the statutory authority which it purported to. In other words, I should regard a challenge to the order on the ground that it had not been made in good faith as within the purview of para. 15 . . . I do not see any need to pick and choose among the different reasons which may support the plea that the authorisation ostensibly granted does not carry the powers of the Act."

Viscount Simonds did not consider that the construction of para. 15 was relevant, and was reluctant to express a final opinion on the matter, though the inclination of his opinion was that the wording was apt to include a challenge on the ground of bad faith.

Interpretation of para. 16

Whether or not fraud or bad faith makes the authorisation of an order "not empowered to be granted" and, therefore, challengeable under para. 15—and the case is not decisive on this—it is now clearly the law that no other method of challenge for fraud or bad faith is open to a complainant. On this the majority view of Viscount Simonds, Lord Morton and Lord Radcliffe, that para. 16 effects a complete bar to any method of challenging an order save under para. 15, is decisive.

Two authorities, among others, were particularly relied upon in the appellant's contention that para. 16 should be read as applying only to orders made in good faith, namely—

(1) a passage at p. 122 of the Tenth Edition of Maxwell on the Interpretation of Statutes, which reads "Enactments which confer powers are so construed as to meet all attempts to abuse them . . . Though the act done was ostensibly in execution of the statutory power and within its letter, it would nevertheless be held not to come within the power if done otherwise than honestly and in the spirit of the enactment."

(2) *Calder* v. *Halket* (1839–40), 3 Moo. P.C. 28, in which the Judicial Committee of the Privy Council interpreted s. 24 of the Act 21 Geo. 3, c. 70, which provided with regard to colonial provincial magistrates "That no action for wrong or injury shall lie in the Supreme Court, against any person whatsoever exercising a judicial office in the country courts, for any judgment, decree, or order of the said court . . ." The Committee felt able to limit these words to such acts done within the jurisdiction of the country courts, though *prima facie* they extend to any such act by such a person.

Viscount Simonds in the *East Elloe* case was not moved by any authorities, and said: "My Lords, I do not refer in detail to these authorities only because it appears to me that they do not override the first of all principles of construction, that plain words must be given their plain meaning. There is nothing ambiguous about para. 16; there is no alternative construction that can be given to it; there is in fact no justification for the introduction of limiting words such as 'if made in good faith,' and there is the less reason for doing so when those words would have the effect of depriving the express words 'in any legal proceedings whatsoever' of their full meaning and content."

Lord Morton also was unable to read these limiting words into the paragraph. He said: "I cannot accept this suggestion. It would be impossible to predicate of any order or certificate that it was made in good faith until the court had inquired into the matter, and that is just what para. 16 prohibits." Paragraph 16 did not create a power and, therefore, the passage from Maxwell did not apply to it. He thought the decision in *Calder* v. *Halket* would have been different if the section there in question had read "No judgment, decree or order of the said court shall be questioned in any legal proceedings whatsoever."

Lord Radcliffe, in concurring in the view that para. 16 was a complete stop to proceedings in respect of the order itself, said that "Merely to say that Parliament cannot be presumed to have intended to bring about a consequence which many people might think to be unjust is not, in my opinion, a principle of construction for this purpose," and concluded: "I am afraid that I have searched in vain for a principle of construction as applied to Acts of Parliament which would enable the appellant to succeed. On the other hand, it is difficult not to recall in the respondents' favour the *dictum* of Bacon: '*Non est interpretatio, sed divinatio, quae recedit a litera*'."

How was it then that Lord Reid and Lord Somervell were able to say that para. 16 was not a bar to proceedings in respect of an order where bad faith is alleged?

Lord Reid, it will be remembered, in dealing with para. 15, divided cases of misuse of power into misuse in *bona fide* and misuse in *mala fide*. On coming to para. 16, he said: "In my judgment, para. 16 is clearly intended to exclude, and does exclude entirely, all cases of misuse of power in *bona fide*. But does it also exclude the small minority of cases where deliberate dishonesty, corruption or malice is involved? In every class of case that I can think of the courts have always held that general words are not to be read as enabling a deliberate wrongdoer to take advantage of his own dishonesty." He then went on to instance cases where general words in a statute are given a limited meaning, e.g., they do not bind the Crown, and he thought they could equally be read so as not to deprive the court of jurisdiction in cases of *mala fides*, and indeed that *Calder* v. *Halket* was precisely in point.

Lord Somervell considered that paras. 15 and 16 must be construed together and "*mala fides* being, in my opinion, clearly excluded from para. 15, it should not, I think, be regarded as within the general words of para. 16. Construing general words as not covering fraud is accepted as right in many contexts. This seems to me an appropriate context for that principle. The Act, having provided machinery for access to the courts in cases of *ultra vires*, cannot have intended to exclude altogether a person defrauded. General

words, therefore, should not be construed as effecting such an exclusion."

The result of this remarkable divergence of opinion in a case of great public importance is that Mrs. Smith and all other persons are barred by para. 16 from having a compulsory purchase order declared invalid in an ordinary action on the ground of bad faith. Whether or not anyone can secure this by an application under para. 15, if he discovers the bad faith in time, remains in doubt, though the opinion of three Lords of Appeal is against it. But at least there is the unanimous decision referred to in the first part of this article, that in any case a personal action in damages remains against the person or persons guilty of bad faith.

R. N. D. H.

We are asked to make it clear that the compensation of £3,000 assessed by the Lands Tribunal in the *East Elloe* case was not in fact paid since Mrs. Smith, the appellant, did not accept it. The statement of facts on p. 329, *ante*, is inaccurate in this respect.

A Conveyancer's Diary

ACTING FOR BOTH PARTIES

THE decision in *Goody* v. *Baring* [1956] 1 W.L.R. 448, and p. 320, *ante*, has already drawn comment in this journal (see p. 327, *ante*). A solicitor acted for both vendor and purchaser in a sale of a house, parts of which were let. The solicitor failed to ascertain on behalf of his client, the purchaser, what were the standard rents of those parts of the property. As a result the purchaser suffered damage. The solicitor was held to have been negligent and to be liable to the purchaser in damages. As a decision on the particular facts, nothing could be more reasonable. But before dealing with the standard of care required of a solicitor in connection with inquiries about the standard rent of a property, the learned judge (Danckwerts, J.) made certain general observations on the position of a solicitor who acts for both parties in a conveyancing transaction which, in my respectful opinion, were not germane to the issue which had to be tried. I propose, in this article, to examine these observations, and next week to consider the part of the judgment in this case which deals with the extent of the inquiries which should be made in advising a purchaser of property subject to a standard rent.

After observing that the defendant had acted for both parties in the transaction, Danckwerts, J., said that it seemed to him to be practically impossible for a solicitor to do his duty to each client properly when he tries to act for both a vendor and a purchaser. He then went on to cite a passage from the judgment of Scrutton, L.J., in *Moody* v. *Cox & Hatt* [1917] 2 Ch. 71, part of which was quoted in the comment on *Goody* v. *Baring* which appeared in this journal last week. I propose to quote it in full.

Lord Justice Scrutton's view

Scrutton, L.J., said (p. 91): "It may be that a solicitor who tries to act for both parties puts himself in such a position that he must be liable to one or the other, whatever he does. The case has been put of a solicitor acting for vendor and purchaser who knows of a flaw in the title by reason of his acting for the vendor, and who, if he discloses that flaw in the title which he knows as acting for the vendor, may be liable to an action by his vendor, and who, if he does not disclose the flaw in the title, may be liable to an action by the purchaser for not doing his duty as solicitor for him. It will be his fault for mixing himself up with a transaction in which he has two entirely inconsistent interests, and solicitors who try to act for both vendors and purchasers must appreciate that they run a very serious risk of liability to one or the other owing to the duties and obligations which such curious relation puts upon them."

Now the facts in *Moody* v. *Cox & Hatt* were very different from anything that occurred in *Goody* v. *Baring*. In the earlier case, the plaintiff agreed to purchase from the defendants certain property which they held as trustees. One defendant was a solicitor and the other a clerk in his employ. The clerk, on his principal's behalf, acted for both vendors and purchaser, and out of a mistaken sense of duty to the beneficiaries under the trust failed to disclose to the purchaser certain information in his possession about the value of the property. In the course of the transaction the clerk took a bribe from the purchaser. The purchaser discovered the non-disclosure before completing and claimed rescission of the contract. The defendant vendors counter-claimed for specific performance. The plaintiff was held to be entitled to rescind on the ground of the clerk's non-disclosure, despite the bribe; the bribe would have afforded a ground for the vendors to rescind, but by counter-claiming for specific performance they had affirmed the contract, and the bribe had thus become irrelevant to the plaintiff's claim for rescission. This is the barest outline of a complicated case (the report takes up over twenty pages of the Law Reports), but it is sufficient to show the difference between the two cases.

To revert to the general observations of Scrutton, L.J., the hypothetical case which the learned lord justice appears to have relied on as a justification for his remarks is a very unreal one. A solicitor acts for both vendor and purchaser on the sale of a property the title to which has some latent flaw. The solicitor is clearly under a duty to the purchaser to disclose the flaw. If the flaw is disclosed in the ordinary way, there are two possibilities. Either the flaw was on the title before the solicitor had anything to do with it; he is then in no way responsible for it, and by disclosing it he does not render himself liable in negligence to his vendor-client. (Imagination boggles at the notion that a solicitor acting for a vendor must suppress, say, all mention of a right of way which he has discovered as a potential incumbrance, or render himself liable to his client for depreciating the value of the property. But Scrutton, L.J., great common lawyer as he was, was not, I think, a conveyancer at any stage of his legal career.) Or the flaw is on the title because the solicitor failed to spot it when he acted for the vendor on the vendor's earlier purchase of the property. Then certainly the solicitor is *prima facie* liable to an action by the vendor; but the liability arises not, as Scrutton, L.J., suggested, because the solicitor "mixed himself up with a transaction in which he has two entirely inconsistent interests": the solicitor is liable because he was under a duty on the earlier occasion to exercise a certain

degree of care and skill on his client's behalf, and failed to do so. There is no inevitable connection between this hypothetical case and the moral which is drawn from it. True, of course, that a solicitor who acts for both parties and who is tempted to cover up at the expense of one of them some previous carelessness or misconduct of his own has an exceptionally good opportunity of doing so. But he would be a rogue if he took it, and I do not think that the observations of Scrutton, L.J., were directed only at rogues.

Standard of care required

The true position would seem to be that solicitors may properly act for both parties, where there is no essential conflict of interest between the parties, but that an even greater care than the usual relationship of solicitor and client imposes must then be exercised. It was pointed out in the comment on *Goody* v. *Baring* last week that there are recognised scales of charges applicable where a solicitor acts for both parties in conveyancing transactions. This has been so for many years, and the propriety of such action has long been recognised from the bench (see *Minton* v. *Kirwood* (1868), L.R. 1 Eq. 449, *per* Sir John Stuart, V.-C., at p. 454, and *Doe d. Peter* v. *Watkins* (1837), 3 Bing. N.C. 421, *per* Tindal, C.J., at p. 424). There is no reference to either of these cases in *Moody* v. *Cox & Hatt* or in *Goody* v. *Baring*.

The employment of one solicitor to act on both sides is a great economy in many conveyancing transactions. The stamp duties on conveyances on sale of certain classes of property are now in the process of being reduced, after many years of agitation by the legal profession which has to act as the unpaid collector of these unpopular and frequently misunderstood charges, with the express object of reducing the initial costs of purchasing a house. It is unfortunate that at this time doubt should be expressed in such strong language as was used in *Goody* v. *Baring* (and used, with all respect, on the strength of earlier observations of such ambiguous import as the remarks of Scrutton, L.J., in *Moody* v. *Cox & Hatt*) about the propriety of a practice of long standing which has precisely the same object in view.

"A B C"

Landlord and Tenant Notebook

"QUIET ENJOYMENT" EXAMINED

THE defendants in *Owen* v. *Gadd and Others* [1956] 2 W.L.R. 945 (C.A.); *ante*, p. 301, were held to have infringed a covenant for quiet enjoyment by erecting scaffolding in front of the shop they had just let to the plaintiff; and the substantial question raised was whether the covenant (which was in the usual terms) could be broken by anything less than physical irruption into the demised premises.

The lease limited user (subject to written consent) to the retailing of baby carriages, radio sets, and radio accessories and toys; the shop was a lock-up one; above it were premises retained by the lessors which, at the time of the grant, were in need of repair. Thus, three days after the commencement of the lease, contractors erected scaffolding in front of the shop window and door, and as a Budget was shortly due and fears of increased purchase tax were entertained by the baby carriage and radio set buying public, the effect was the more serious. In the absence of proof of special damage, the county court judge, who held that the covenant had been broken, awarded the plaintiff £2 damages; but what was argued on appeal was whether the erection of scaffolding *outside* demised premises could constitute a breach of covenant for quiet enjoyment, and whether there was evidence to support the finding that it had been broken.

Disturbance: physical, metaphysical

It was Buckley, J., who, in his judgment (at first instance) in *Jaeger* v. *Mansions Consolidated, Ltd.* (1902), 87 L.T. 690 (C.A.), said that, to amount to a breach of covenant for quiet enjoyment, acts complained of must be physical, not metaphysical. In that case the tenant of a flat was aggrieved by the user for immoral purposes of other flats in the building; he complained of failure to enforce restrictions, of nuisance and annoyance caused by noise, improper conduct, obscene language; of disturbances on the common staircase; and the question examined in the report was a point of law, namely whether the claim disclosed any cause of action. One sees the point of Buckley, J.'s distinction, though, if I may say so, the examples the learned judge gave suggest that it may not always be easy to draw it as he saw it. Thus, interference by smoke was considered physical, *Tebb* v. *Cave* [1900] 1 Ch. 642 being cited, while noise from dancing was classed as metaphysical (*Jenkins* v. *Jackson* (1888), 40 Ch. D. 71). Since then, *Tebb* v. *Cave* has come in for criticism, in *Davis* v. *Town Properties Investment Corporation, Ltd.* [1903] 1 Ch. 797 (C.A.), which, like *Jaeger* v. *Mansions Consolidated, Ltd.*, was among the many authorities cited in *Owen* v. *Gadd*.

Title, possession, enjoyment

In *Sanderson* v. *Berwick-upon-Tweed Corporation* (1884), 13 Q.B.D. 547 (C.A.), it was held that where the ordinary and lawful enjoyment of the demised premises is substantially interfered with by the acts of the lessor or of those lawfully claiming under him, the covenant is broken, it not being necessary to show that either title or possession is affected. The case was one in which the facts were a little out of the ordinary; water had escaped on to the plaintiff's farm from an adjoining farm let by the same landlords, the defendant corporation; the cause of the escape was the faulty construction of a drain, and this was held to amount to a breach of covenant for quiet enjoyment. While the decision was spoken of approvingly in *Robinson* v. *Kilvert* (1889), 41 Ch. D. 88 (C.A.), Lord Evershed, M.R., considered that some qualification ought to be placed upon the language used, because it was used in reference to particular facts; nevertheless, the learned Master of the Rolls accepted the proposition that the disturbance need only be of a "direct and physical character"; that there need be no physical irruption (by persons or by things, such as water); and that the placing of scaffolding poles could, accordingly, constitute a breach. The other members of the court concurred.

Derogation from grant

It is, perhaps, an exaggeration to say that when a tenant cannot think of anything else to sue his landlord for, he sues

for breach of covenant for quiet enjoyment and for derogation from grant; but I think it is a little unusual to find a claim for the one without an alternative claim for the other.

"I am also satisfied that there was an obligation upon the corporation not to derogate from their grant, and not to do anything which would render the demised premises materially less fit for use as private dwelling-rooms" runs a passage from the judgment of Atkinson, J., in *Newman* v. *Real Estate Debenture Corporation, Ltd., and Flower Decorations, Ltd.* [1940] 1 All E.R. 131, in which a tenant of a flat complained of conversion of part of the rest of the building into business premises, contrary to what the lease contemplated. *Aldin* v. *Latimer Clark, Muirhead & Co.* [1894] 2 Ch. 437 illustrated a similar derogation: landlords whose predecessor in title had known that their tenant had taken the premises for timber-drying purposes were held to have derogated from their grant when they erected a power station which impeded the access of air to those premises.

In those cases, it is true, the interference was more lasting in nature than that which disturbed the plaintiff in *Owen* v. *Gadd*. But the underlying principle is, as Bowen, L.J., said in *Birmingham, Dudley & District Banking Co.* v. *Ross* (1888), 38 Ch. D. 295 (C.A.), that a grantor, having given a thing with one hand, is not to take away the means of enjoying it with the other; and the operation of this principle (at least as old, as Bowen, L.J., said, as the Year Books) does not, in my submission, depend on considerations of quantity.

Trespass

Presumably the plaintiff in *Owen* v. *Gadd*, or his advisers, considered the possibility of a claim for trespass based on the *usque ad medium filum* presumption; if the lessors' boundary was the centre of the highway, it might be suggested that the pavements on which the scaffolding poles were placed were part of what was demised. It has been shown that goods placed on a highway, and a public highway at that, can be distrained as being on the demised premises (*Berridge* v. *Ward* (1861), 10 C.B.N.S. 400); but in view of the rebuttability of the presumption (and the shop was a lock-up one), the uncertain effect of statutory highway vesting provisions and what was said in *Tunbridge Wells Corporation* v. *Baird* [1896] A.C. 434, far be it from me to offer the least criticism of an omission to complicate the proceedings by an alternative claim for trespass.

R. B.

HERE AND THERE

TOO MUCH PROXY

MANY a man must be sent to prison when what he really needs is three months at the seaside, but the trouble is getting him there. It is not every penal reformer who would pick his holiday companion out of the dock. The late Sir William Clarke Hall, when he was a metropolitan magistrate, would on occasion take juvenile delinquents home to stay with his family. Sometimes it turned out all right; sometimes it did not. But he had the courage of his and their convictions. In general, however, as the Lord Chancellor said recently when legal aid was being discussed in the House of Lords, "The whole tendency of human benevolence is to find some opportunity of helping someone at the public expense." That cannot be right. If the wrongdoer is to be helped, some human being in direct contact with him must do the helping. You can't do that sort of good by proxy, for if you try to it's not you who are doing the good. There is no secondhand helping hand; so if you want more humanity in dealing with the convicted go and dedicate your own humanity or leave the subject alone. For one thing, only personal contact will tell you which of the convicted will be set on their feet by the three months at the seaside treatment (or some more formal equivalent) and which will be encouraged to flop down on the cushion of public benevolence and never stand on their own feet again. Besides, only on your own resources can you indulge in that free and easy kindness to the undeserving which is the essence of *caritas* (as contrasted with justice to the deserving). When you are merely administering moneys wrung from more or less reluctant donors, justice to them and justice to the recipients must be weighed, one against the other.

VARIED EXPERIMENTS

THERE is no end to the variety of penal experiments, most of them initiated with the most honourable intentions. Even transportation to Botany Bay started with the perfectly sensible idea of giving broken men a fresh start in a new world. Now the stress is all on re-education. As the Home Secretary said recently in laying the foundation stone of "our first truly twentieth-century prison" at Everthorpe Hall in Yorkshire: "Moral and personal training will be carried out in a light, commodious and civilised environment which will suggest the spirit that inspires it rather than the dark and brutal spirit of repression that haunts our ancient county gaols." In this, the first new prison built since 1910, ample provision is planned for industrial training, education and recreation. One salutes, of course, the planned experiment founded on scientific research and statistical calculation:—

> Image the whole, then execute the parts—
> Fancy the fabric
> Quite, ere you build, ere steel strike fire from quartz,
> Ere mortar dab brick.

One wishes such a venture well, but one must not despise the wilder, more haphazard paths of human discovery, where great truths are stumbled on by accident and a glass of milk thoughtlessly knocked over by a laboratory assistant ruins, it seems disastrously, some precious chemical compound but unexpectedly produces the perfect solution for sticking racing car parts together or coalesces into a substance that will revolutionise television. Even more unexpected are the byways of psychology and penology, and one should not too readily dismiss the possibilities inherent in such unplanned experiments as that of the happy prison at Pont L'Eveque in Normandy which came to such a discouraging end not long ago. The chief warder, you remember, had extended to his charges the most approved principles of "learn as you please" educational establishments. Under his benevolent rule there was nothing of "the dark and brutal spirit of repression." On the contrary, if love, laughter and good living have a regenerative effect on the human spirit, his charges must have come out far better men than they went in. But the French prison commissioners refused to incorporate in their system an Abbaye de Thélème and at the Caen Assizes the daring experimenter was himself sent to a less advanced institution.

HAPPY PRISON IN UGANDA

Now it seems a very similar experiment has been in process of investigation in Uganda and a commission of inquiry is looking into the conditions and organisation in the Luzira Gaol there. At Pont l'Eveque one of the cardinal principles of the deposed chief warder was a respect for democratic methods so that inmates (who, after all, constitute a majority in the establishment) should be allowed positions of responsibility. So it was in the Uganda experiment. A London-born accountant, serving a term for theft, false accounting and false pretences, was promoted to the key position of prison clerk. With his talents it was an easy matter to reinforce the prison staff by eight notional warders existing only on the pay sheets. This provided much needed funds which could be devoted to the provision of civilised amenities such as sweets, cigarettes and pools coupons. Here was *la carrière ouverte au talent* and he was able, he said, more or less to control the warders. So little was there of brutal repression and frustration that when he wanted to visit a Buganda girl, a friend of his, outside the prison, he merely allotted the warders various tasks and walked out. Another inmate, also an Englishman, ran the prison transport and was able to drive regularly unescorted to Kampala. He was eventually released with great humanity on receipt of a letter from England bringing news of his wife's illness. But, according to the evidence before the current commission of inquiry, the letter was written by another prisoner on the gaol typewriter. There was a lot more interesting evidence, for example, that moonshine liquor from a still in the warders' quarters was the favourite diet in the prison hospital, that the prison was run on "co-educational" lines with no strict segregation of male and female prisoners, that meals and drinks could be sent in from outside and that prisoners had access to blank discharge forms. The ultimate findings of the commission should make stimulating reading. One hopes it will not too readily condemn a good Benthamite institution clearly run for "the greatest happiness of the greatest number."

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

Preliminary Enquiries as to Rent

Sir,—The case of *Goody* v. *Baring* [1956] 1 W.L.R. 448 (which appeared in the 28th April issue of the SOLICITORS' JOURNAL) must cause the profession some serious misgivings. In his judgment, Danckwerts, J., suggests that when a property is being sold subject to existing tenancies the purchaser's solicitor "should enquire of the tenants the terms on which they occupy the property and in a case which is affected by the Rent Acts the enquiries should include an enquiry whether the rents they pay are the standard or the recoverable rents of the property" (p. 454). The objections to such a course seem to me to be as follows:—

(1) It involves the disclosure to a tenant of the sale prior to contract which might enable him to defeat the purchaser in the transaction by making a higher offer to the landlord.

(2) The effectiveness of such a letter is open to doubt since even if the tenant replies that the rent he pays *is* the standard or recoverable rent he may still subsequently reclaim any excess rent that he discovers he has paid. The doctrine of estoppel cannot exclude the Acts (*Solle* v. *Butcher* [1950] 1 K.B. 671). Indeed the letter would almost certainly provoke a tenant to set afoot enquiries for his own benefit.

(3) It is doubtful whether a letter of the type envisaged would produce more than a statement by the tenant of the rent he actually pays. Even more probably the letter would receive no reply at all!

Accordingly I submit that it would be either dangerous or fruitless or both for solicitors to follow the suggestion of the learned judge without first obtaining very careful instructions from their clients.

London, E.C.4. ANTHONY GRANT.

REVIEWS

Husband and Wife in English Law. By R. L. TRAVERS, of the Middle Temple, Barrister-at-Law. 1956. London: Gerald Duckworth & Co., Ltd. 7s. 6d. net.

In a little over a hundred pages, Mr. Travers has set out a great deal of law on marriage, on matrimonial rights and liabilities and on divorce for the benefit primarily of laymen, but in a form which will probably be found useful by students, and with a compactness that may well appeal to lawyers. For the benefit of those whose purposes demand further research there are ample references, put at the end of the chapter, as is the modern fashion in monographs for the million. The style adopted is a happy compromise between the "proposition" method, familiar in text-books, and a more explanatory treatment of matters involving an understanding of legal terminology. Its terseness often amounts to wit.

We would take the author to task for one peccadillo only—the repeated use of the now impure expression "Police Court."

The Food and Drugs Act, 1955. Reprinted from Butterworth's Annotated Legislation Service. With an Introduction by JOHN A. O'KEEFE, LL.B., B.Sc. (Econ.), of the Middle Temple, Barrister-at-Law, and Annotations to Sections by ROBERT SCHLESS, of Gray's Inn, Barrister-at-Law. 1956. London: Butterworth & Co. (Publishers), Ltd. £1 10s. net.

At a period in our professional lives when constantly changing legislation has demanded the production of many new text-books, we have lacked any up-to-date work covering food and drugs procedure. The consolidating legislation represented by the Food and Drugs Act, 1955, covers a series of recent Acts of Parliament which have created many changes, and officers of local authorities in particular have felt the need for a comprehensive text-book. "The Food and Drugs Act, 1955," introduced by John A. O'Keefe, Esq., LL.B., B.Sc. (Econ.), with Annotations to Sections by Robert Schless, Esq., and published by Messrs. Butterworth & Co. (Publishers), Ltd., fills this long-felt need and cannot help but be of service to the many professional officers whose duties are concerned either wholly or partly with food and drugs administration.

The Introduction covers the principal changes effected by the 1954 Act and is indeed useful. However, it is in the Annotations to the Sections of the Food and Drugs Act, 1955, that the main value lies. The text of each section is given in full, followed by notes calculated to offer excellent guidance upon interpretation, both to solicitors and lay administrative officers. Assistance upon interpretation is always a prior need and the book can be commended for its value in this direction. The Food Hygiene Regulations, 1955, by way of an Appendix, complete this work.

The presentation of the Food and Drugs Act and the Regulations appearing in one volume complete with amplifying text, all set out in a clear and lucid manner, offers a form of reference for which many of us have been waiting. That the book fills a need is unquestionable and undoubtedly it will prove to be a much used work of reference.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

WEST AFRICA: JURISDICTION: "SUCCESSION" SUIT OR "LAND CAUSE"

Vanderpuye *v.* Botchway

Lord Oaksey, Lord Tucker, Lord Cohen, Lord Keith of Avonholm, Mr. L. M. D. de Silva. 23rd April, 1956

Appeal from the West African Court of Appeal.

In the case out of which this appeal arose the appellants, who were seventeen of the children by "six-cloth" marriages of Jacob Vanderpuye, deceased, who died on 5th October, 1918, commenced proceedings on 28th June, 1947, in Ga Native Court B, Eastern Province, Gold Coast Colony, against Joel Douglas Kwaku Botchway, who was a first cousin in the matrilineal line of the deceased and had been appointed head of the family of the deceased, claiming, *inter alia*, a declaration of the share to which they were entitled and the appropriation to them of such of the estate as represented the share to which they were entitled according to the Ga Native customary law. The Native Court B declared that the interest of the six-cloth children of the deceased was the whole estate. Mr. Botchway appealed from that judgment to the Land Court at Accra, which, despite an objection that the Land Court had no jurisdiction in the matter as it was a succession case, allowed the appeal and substituted a declaration that the appellants were entitled to one-third of the property of the deceased. From that decision the appellants appealed to the West African Court of Appeal, including in their grounds of appeal the objection that the Land Court had no jurisdiction to hear Mr. Botchway's appeal as the matter was not a land cause or matter. Section 46 of the Native Courts (Colony) Ordinance (c. 98 of the Laws of the Gold Coast, 1951), which dealt with appeals from Native Courts of grades B, C or D, provided that the appeal was to the Magistrate's Court or, in the case of a land cause or matter, to the Land Court. The West African Court of Appeal, on 1st February, 1951, rejected the contention that the matter was not a land cause and later delivered judgment on the merits, dismissing the appeal. From that decision the appellants now appealed and again took the point that the Land Court had no jurisdiction to entertain the appeal against the judgment of the Native Court B.

LORD COHEN, giving the judgment, said that their lordships based their decision that the suit was not a land cause, and that the Land Court had therefore no jurisdiction to entertain the appeal from the Native Court B, on the ground that a suit for the determination of the share of the appellants and for the distribution of the estate was a succession case and not a case relating to the ownership, possession or occupation of land. Such decision was in accordance with what their lordships considered to be the *ratio decidendi* of the board in *George Hagan* v. *Effuah Adum* [1939] 5 W.A.C.A. 35, which they thought was still relevant despite the enactment of the Native Courts (Colony) Ordinance. To determine into which category— succession case or land cause—a particular suit fell, the court must apply the test of what was the real issue between the parties and not look only at the wording of the plaint; see *Archie Kwow* v. *Ohene Essien Eku II* [1934] 2 W.A.C.A. 180. The appeal would be allowed, the orders of the West African Court of Appeal and of the Land Court set aside, and the order of the Native Court B restored. The respondent must pay the costs of the appeals to the Land Court, the West African Court of Appeal and to the Board.

APPEARANCES: *T. G. Roche*, Q.C., and *Gilbert Dold* (*A. L. Bryden and Williams*); *L. G. Scarman* (*Sydney Redfern & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 1080**

MEDICAL PRACTITIONER: MEDICAL DISCIPLINARY COMMITTEE: PROCEDURE RULES: SUGGESTED ALTERATION

Ong Bak Hin *v.* General Medical Council

Lord Oaksey, Lord Tucker, Lord Cohen, Lord Keith of Avonholm, Mr. L. M. D. de Silva. 24th April, 1956

Appeal from the Medical Disciplinary Committee.

The appellant, Dr. Ong Bak Hin, a registered medical practitioner practising in Malaya, was charged before the Medical Disciplinary Committee of the General Medical Council with having, with intent to cause the miscarriage of Mrs. Tee Bee Geok, unlawfully performed an operation of abortion which caused her death and thereby committed an offence under s. 314 of the Penal Code of the Federation of Malaya of which he was convicted in the High Court of Malacca on 14th August, 1953, and sentenced to five years' imprisonment (reduced on appeal to two years), and with having in relation to the facts alleged against him been guilty of infamous conduct in a professional respect. The evidence adduced before the Disciplinary Committee in support of the charge consisted of the record of the hearing in the High Court of Malacca "edited" by the deletion of certain passages in the evidence which the legal assessor sitting to advise the committee considered would not be admissible in a criminal court in England, and certain further passages at the request of the appellant's solicitor. The summing up of the judge at the trial was also omitted. By r. 63 of the Medical Disciplinary Committee (Procedure) Rules (S.I. 1951 No. 665): "The committee may receive any such oral or other evidence as would be receivable in a court of law, and in addition may, after consultation with the assessor to the committee, treat any statement of fact contained in any document as evidence of that fact." While agreeing that the documentary evidence was admissible, it was contended for the appellant, *inter alia*, that the witnesses who had given evidence at his trial should be called to give oral evidence before the committee. The appellant, who had contended that before he began the operation he believed that pregnancy had already terminated and that the remnants had to be cleared, and that the whole purpose of the operation was thus limited and that the products of conception removed did not include any piece or pieces of a fœtus, was found guilty by the committee of infamous conduct in a professional respect and his name was directed to be erased from the register. He now appealed to Her Majesty in Council under s. 20 of the Medical Act, 1950.

LORD TUCKER, on 24th April, giving the reasons of the Board for dismissing the appeal on 19th March, said that the observations in *General Medical Council* v. *Spackman* [1943] A.C. 627 were—subject to the effect of the Rules of Procedure—applicable to such a case as the present where the conviction, not having taken place in the United Kingdom or the Republic of Ireland, was only *prima facie* evidence of the infamous conduct alleged. The Disciplinary Committee as a domestic forum charged with the duty of making "due inquiry" into the circumstances attending the conviction in a distant country of a medical practitioner with a view to deciding—of which they alone were the judges—whether he had been guilty of infamous conduct in a professional respect, could not adequately perform that duty unless they were in possession of the whole of the proceedings in the criminal court in which the conviction occurred. The record of the proceedings was a "document" within the meaning of r. 63 of the Medical Disciplinary Committee (Procedure) Rules. The admissibility of such documents was, however, limited to the statements of fact contained therein, and in the case of the record of proceedings in a criminal court would exclude the judge's charge to the jury and other parts of the record which it was desirable that the committee should see. In the present case the record, with certain excisions, of the proceedings before the criminal court having been put in by consent as soon as the committee had decided, quite properly, that the attendance of the witnesses from Malaya was not practicable and that their absence did not vitiate the proceedings, that consent was fatal to any objection before their lordships' board to the admission of the record. There had been no miscarriage of justice. "Their lordships desire, however," the judgment concluded, "to draw the attention of those concerned to the desirability of an alteration in the Rules of Procedure whereby the committee can be empowered beyond all question to receive in evidence and examine the whole of the officially authenticated proceedings of the convicting court in this class of case."

APPEARANCES: *J. R. Cumming-Bruce* and *R. Barr* (*Hempsons*); *J. G. S. Hobson* (*Waterhouse & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 515**

House of Lords

PROFITS TAX: NATIONALISED INDUSTRY: COMPENSATION: INTERIM INCOME PAYMENTS

Inland Revenue Commissioners *v.* Butterley Co., Ltd.

Viscount Simonds, Lord Morton of Henryton, Lord Reid, Lord Radcliffe and Lord Somervell of Harrow

19th April, 1956

Appeal from the Court of Appeal ([1955] Ch. 453; 99 SOL. J. 257).

By s. 19 (1) of the Coal Industry (Nationalisation) Act, 1946, compensation for the transferred assets was "due on the primary vesting date" (1st January, 1947) "subject to determination of the amount," and ss. 19 (2) and 22 provided a right to "interim income" or to "revenue payments" for the period between "the primary vesting date and the date on which any such compensation is fully satisfied." By para. 7 of Sched. IV to the Finance Act, 1937, as amended by s. 32 (1) of the Finance Act, 1947, it was provided that "income received from investments or other property shall be included in the profits" for the purposes of profits tax. The appellant company carried on a number of businesses, including a colliery undertaking. On 1st January, 1947, the assets of its colliery undertaking vested in the National Coal Board under the Act of 1946 and during the years 1947–50 it received "interim income" or "revenue" payments under s. 19 (2) calculated in accordance with s. 22 (2) and (3) of the Act of 1946 and s. 1 (2) of the Coal Industry (No. 2) Act, 1949. These sums were included in the computation of its profits for the purposes of its assessments to profits tax. The Special Commissioners discharged the assessments so far as these sums were included. Roxburgh, J., reversed their decision. The Court of Appeal reversed the decision of Roxburgh, J. The Crown appealed to the House of Lords.

VISCOUNT SIMONDS said that the appeal should be dismissed. In the Court of Appeal it was common ground that the interim income payments, whether or not they were income received from property, were only chargeable to profits tax if they were profits of a trade or business carried on by the company during the relevant chargeable accounting periods. That must be right, for it was just what the Act said. To bring a payment within the reach of profits tax it was not enough that it should be income derived from the property of the company without regard to the question whether it arose from a trade or business carried on by the company during the relevant period. But this left open the question what in view of s. 20 of the Act of 1937 and Sched. IV to that Act, as amended by the Act of 1947, were to be regarded as the profits arising from any trade or business carried on in the United Kingdom in the relevant period. The Crown contended that during the relevant periods the company carried on a number of trades or businesses and the payments in question were available for carrying them on and therefore those payments were profits arising from the trade. But neither was the capital asset (viz., the right to receive compensation) an asset so related to any trade or business carried on by the company that it fell within para. 7 of Sched. IV to the Act of 1937, nor, if it were, were the money payments income of that asset.

The other noble and learned lords agreed that the appeal should be dismissed.

APPEARANCES: *Cross*, Q.C., *Sir Reginald Hills* and *E. B. Stamp* (*Solicitor of Inland Revenue*); *Russell*, Q.C., *Senter*, Q.C., *Desmond Miller* and *C. P. F. Jenkin* (*Thicknesse & Hull*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 1101**

Court of Appeal

JUDICIAL SEPARATION: ALIMONY *PENDENTE LITE* AFTER CONFESSION OF ADULTERY

Waller *v.* Waller

Jenkins and Hodson, L.JJ. 26th March, 1956

Appeal from Barnard, J.

By s. 20 (1) of the Matrimonial Causes Act, 1950: "On any petition for judicial separation, the court may make such interim orders for the payment of alimony to the wife as the court thinks just." A wife, on petitioning for a decree of judicial separation, admitted certain acts of adultery, but alleged that there had been conduct conducing and condonation, which the husband denied. An application by the wife for alimony *pendente lite* was granted by the judge. The husband appealed.

JENKINS, L.J., said that s. 20 (1) was, *mutatis mutandis*, in identical terms with s. 19 (1) which dealt with suits for divorce and nullity, so that so far as the Act was concerned the court had the amplest discretion in the matter of alimony *pendente lite* in suits for nullity, divorce or judicial separation. It was contended for the husband that admitted adultery constituted a bar, and remained such even though the wife sought the discretion of the court and alleged on oath conduct conducing and condonation. But the authorities cited disclosed no warrant for so limiting the discretion of the court. The conclusion to be drawn from *Welton* v. *Welton* [1927] P. 162 and other cases was that the court must take into consideration all relevant matters, including such matters as adultery by the wife and allegations of conduct conducing and condonation. It was impossible for the court to lay down any hard-and-fast rule, whether called a rule of law or a rule of practice, to the effect that in all circumstances adultery by the wife barred her claim. It might be that in some circumstances discretion might be exercised in favour of a wife when there was no allegation that the adultery had been condoned or brought about by conduct conducing; for, as was said in *Welton* v. *Welton*, *supra*, the wife was a competent suitor, and if she was such it must not be judged against her at an interlocutory stage that she would necessarily fail in the proceedings. The appeal should be dismissed.

HODSON, L.J., agreed. Appeal dismissed.

APPEARANCES: *F. Whitworth* (*Rowe & Maw*); *J. Stephenson* (*Glover & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 1071**

FACTORY: EMPLOYEE INJURED BY MATERIAL EJECTED FROM DANGEROUS MACHINE

Kilgollan *v.* William Cooke and Co., Ltd.

Singleton, Morris and Romer, L.JJ. 18th April, 1956

Appeal from Pilcher, J.

The plaintiff, while in charge of a stranding machine in the defendants' wire rope works, was blinded in one eye by a particle of wire which flew out of the machine. There was a guard over a portion of the machine, but this admittedly did not comply with s. 14 (1) of the Factories Act, 1937, which requires that every dangerous part of any machinery shall be securely fenced. The plaintiff brought an action claiming damages for breach of statutory duty and for negligence at common law. Pilcher, J., dismissed the action. The plaintiff appealed.

SINGLETON, L.J., said that it was admitted that if there had been a guard which complied with s. 14 (1), the accident would not have happened; though the purpose of the guard was not to give protection against material flying out but to prevent a workman from coming into contact with the machinery. It was laid down in *Nicholls* v. *F. Austin* (*Leyton*), *Ltd.* [1946] A.C. 493 that the obligation to fence under s. 14 (1) was an obligation to guard against contact with any dangerous part of a machine and not to guard against dangerous materials ejected from it, and there was a similar decision under s. 13 (1) regarding transmission machinery in *Carroll* v. *Andrew Barclay and Sons, Ltd.* [1943] A.C. 477. It was contended that *Nicholls'* case, *supra*, did not apply as in that case, unlike the present, there was no statutory breach; that argument deserved sympathy but could not prevail, as Viscount Simonds had pointed out in *Grant* v. *National Coal Board* [1956] 2 W.L.R., at p. 754 (*ante*, p. 224), that a plaintiff must prove that the injury was one against which the legislation was designed to protect him; that was not so in the present case, and the claim under s. 14 (1) failed. The case put forward by the plaintiff at common law was that the defendants knew of the risk of wire coming out and that there had been a number of accidents so caused, but nevertheless took no steps to protect their workpeople against the risk of injury. It had been established that there had been a number of minor injuries, and that the defendants had done nothing and had disregarded the recommendation of a factory inspector. They had failed in their common-law duty, and the appeal should be allowed on that ground.

MORRIS and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *J. F. Drabble*, Q.C., and *P. Stanley-Price*, Q.C. (*Gibson & Weldon*, for *John Whittle, Robinson & Bailey*, Manchester); *G. S. Waller*, Q.C., and *R. R. Rawden-Smith* (*Bell, Brodrick & Gray*, for *Harold Jackson & Co.*, Sheffield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 527**

LANDLORD AND TENANT: APPLICATION BY SUB-TENANT FOR NEW TENANCY: STATUTORY TENANT NOT "THE LANDLORD"

Piper *v.* Muggleton

Jenkins and Hodson, L.JJ., and Lloyd-Jacob, J.

24th April, 1956

Appeal from Wolverhampton County Court.

The respondent was a weekly tenant of premises comprising a dwelling-house and a shop. He lived in the dwelling-house and occupied part of the shop for the purposes of his business as a plumber, the remainder of the shop being occupied by the applicant for the purposes of her business as a dealer in fancy goods on payment of 7s. 6d. per week to the respondent. The respondent opposed an application for a new tenancy under the provisions of the Landlord and Tenant Act, 1954, on the ground that he required the premises for a business to be carried on by him. He opposed the grant in the capacity of "the landlord" for the purposes of s. 44 of the Act of 1954 and he was joined as respondent to the application in that capacity. Before the application could be heard a notice to quit was served on the respondent by his landlords, and by the date of the hearing, the notice to quit having expired, the respondent was remaining in possession as a statutory tenant, since the premises were admittedly within the protection of the Rent Acts. At the hearing the first question raised was whether the applicant's occupancy was by virtue of a tenancy to which the Act of 1954 applied or whether it was a mere licence to occupy. The county court judge decided that question in the applicant's favour but he dismissed her application on the ground that the respondent as "the landlord" had established his ground of objection under s. 30 (1) (*g*) of the Act of 1954. The applicant appealed.

JENKINS, L.J., delivering the judgment of the court, said that the facts found by the county court judge showed that the applicant had a tenancy of her part of the shop and she was, accordingly, entitled to the protection of the Act of 1954. At the outset of the proceedings the respondent was "the landlord" within the meaning of s. 44 but when the contractual tenancy was determined and he became a statutory tenant, which took place before the hearing, he then ceased to be "the landlord," whether or not his statutory tenancy extended to the applicant's part of the shop. It was axiomatic that a so-called "statutory tenant" had no interest in the premises, but merely a personal right to be allowed to remain in occupation of them, and it followed that a statutory tenant could not be "the landlord" within the meaning of s. 44. Moreover as the part of the shop occupied by the applicant as a tenant was used wholly for business purposes, it seemed to follow that the respondent's statutory tenancy did not extend to that part. Reference was made to *Gidden* v. *Mills* [1925] 2 K.B. 713 and *Gee* v. *Hazleton* [1932] 1 K.B. 179. It was necessary that at every stage of proceedings under the Act of 1954 the person claiming to be, or joined as, "the landlord" should in fact answer that description and if there was a change of interest by which one person ceased to be and another became "the landlord," that other person would become "the landlord" for the purpose of all further steps: see the judgment of Evershed, M.R., in *X. L. Fisheries, Ltd.* v. *Leeds Corporation* [1955] 2 Q.B. 636. "The landlord" in the statutory sense was a necessary respondent to a tenant's application for a new tenancy, and if the person joined as "the landlord" ceased to be such before the hearing, then the proceedings ceased to be properly constituted. In this case, pending the substitution or addition of the superior landlords as respondents, the proceedings were not properly constituted. It was not sufficient that they had been notified of the hearing and had elected not to appear or to be represented. The appeal should either at the option of the applicant be dismissed, or if she gave an undertaking to join the superior landlords as respondents, the application should be remitted to the county court for a rehearing after the joinder had been effected. Counsel for the applicant said that she would prefer the latter alternative.

APPEARANCES: *R. Geoffrey Greene* and *N. C. H. Browne-Wilkinson* (*Stafford Clark & Co.*, for *William Wright & Son*, Dudley); *John Hobson* (*Sharpe, Pritchard & Co.*, for *H. Ernest Sargent & Son*, Wolverhampton).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 1093]**

Queen's Bench Division

LANDLORD AND TENANT: COVENANTS AS TO USES OF SHOPS: "TRADE OR BUSINESS OF BREAD AND CONFECTIONERY": GROCERS SELLING BREAD AND CONFECTIONERY

Labone *v.* Litherland Urban District Council; Liverpool Co-operative Society, Ltd., and Another, third parties

McNair, J. 20th February, 1956

Action.

The lessors of a row of shop premises leased a shop to a baker and confectioner who covenanted "not to carry on upon the premises any trade or business whatsoever other than that of bread and confectionery"; the lessors themselves covenanting "not to permit or suffer to be carried on upon adjacent premises the trade or business for which the demised premises are let." The lessors let adjacent premises to two firms of grocers, who, in the course of business, sold bread and confectionery to an extent amounting to 2¼ and 1½ per cent. of their sales. The plaintiff claimed damages for breach of covenant; the defendants brought third party proceedings against the grocers under circumstances which do not call for a report.

MCNAIR, J., said that "bread and confectionery" was not strictly a trade or business, such as "grocer." The plaintiff contended that the trade or business concerned was that of selling bread and confectionery; but the more natural and grammatical construction of the words was to treat them as words of description of the class of trade or business, so that the monopoly reserved to the tenant was that of a shop in which substantially only bread and confectionery were sold. The covenant was plainly different from one "not to sell bread or confectionery by way of trade or business." If that construction was correct, the plaintiff's claim failed. Even on the plaintiff's construction, his claim failed; it was quite artificial to say that at a grocer's shop there was being carried on the trade or business of selling each substantial group of articles which a grocer commonly sold; a grocer who *inter alia* sold bread and confectionery was not in ordinary parlance carrying on the business of selling bread and confectionery. The conclusion reached was supported by observations in *A. Lewis & Co. (Westminster), Ltd.* v. *Bell Property Trust, Ltd.* [1940] Ch. 345, in which it was held that the sale of cigarettes in a tea shop was not a breach of a covenant not to use the premises for the business of the sale of tobacco and cigarettes. Judgment for the defendants.

APPEARANCES: *G. Clover* (*Forwood, Williams & Co.*, Liverpool); *A. E. Baucher* (*William Boys*, Litherland); *G. G. Blackledge*, Q.C., and *L. S. Rigg* (*H. J. Davis, Berthen & Munro*, Liverpool); *G. Newman* (*Cooke, Patterson & Co.*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 522**

LOCAL GOVERNMENT: VOTING BY COUNCILLOR-TENANTS OF COUNCIL HOUSES

Brown and Others *v.* Director of Public Prosecutions

Lord Goddard, C.J., Cassels and Donovan, JJ. 17th April, 1956

Case stated by Northampton Justices.

The Local Government Act, 1933, provides by s. 76 (1): "If a member of a local authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting . . . disclose the fact, and shall not take part in the consideration or discussion of or vote on any question with respect to, the contract or other matter: Provided that this section shall not apply to an interest in a contract or other matter which a member may have as a ratepayer or inhabitant of the

area, or as an ordinary consumer of gas, electricity or water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public." A resolution moved at a council meeting provided that a "lodgers' allowance" hitherto payable by tenants of council houses who took in lodgers or sub-let should cease to be payable except where the tenants were also members of the council. Before the resolution was put, an amendment was moved to delete the words relating to tenants who were also councillors so as to put them on the same footing as other tenants. Six councillors who voted against the amendment (which was defeated) and in favour of the substantive resolution were themselves tenants of council houses. Three of the six had lodgers; before voting all had declared their interest as council tenants. In proceedings brought under s. 76 (1) the six councillors were convicted, and appealed.

LORD GODDARD, C.J., said that there was no suggestion of corruption or improper motive. The first question was whether it made any difference whether the defendants got any pecuniary advantage or disadvantage. According to the terms of the section that was not so; Parliament had said that they must not vote at all, and it was no answer to say that they voted against their pecuniary interest. It could not be said that tenants of council houses who paid rent had no pecuniary interest. It was not submitted that housing was a "service" within the meaning of the proviso. It was, in a sense, a social service, but it could not be said that the provision of a house was a "service" within the terms of the proviso; a landlord was not regarded as rendering, or a tenant as taking, advantage of a service. Further, "right" must mean legal right, and no one had any such right to acquire a council house. The appeals should be dismissed.

CASSELS and DONOVAN, JJ., agreed. Appeals dismissed.

APPEARANCES: *Sir Hartley Shawcross*, Q.C., and Miss *J. Graham Hall* (*Parker, Thomas & Co.*, for *Max Engel & Co.*, Northampton); *Sir H. Hylton-Foster*, Q.C., S.-G., *N. McKinnon* and *P. Wrightson* (*Director of Public Prosecutions*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 1087

SOLICITOR: DISCIPLINE: FALSE AFFIDAVIT FILED BY SOLICITOR'S CLERK WITHOUT PRINCIPAL'S KNOWLEDGE: ORDER AGAINST CLERK

***In re* a Solicitor's Clerk**

Lord Goddard, C.J., Cassels and Donovan, JJ.

24th April, 1956

Appeal from an order of the Disciplinary Committee.

The Solicitors Act, 1941, provides by s. 16 (1) (*b*): "Where it appears to the Society (i) in the course or as a result of any proceedings before the Disciplinary Committee under the disciplinary enactments, or (ii) in the exercise of their powers under rules made under the Solicitors Act, 1933, or this Act, that a person, who is or was a clerk to a solicitor but is not himself a solicitor, has been a party to any act or default of such solicitor, in respect of which an application or complaint has been or might be made against such solicitor to the Disciplinary Committee under any enactment, an application may be made by or on behalf of the Society to the Disciplinary Committee that an order be made directing that as from a date to be specified in such an order, no solicitor shall in connection with his practice as a solicitor take or retain the said person into or in his employment or remunerate the said person without the written permission of the Society . . ." A complaint was preferred on behalf of The Law Society against a solicitor alleging that he had been guilty of professional misconduct in that he had (*a*) caused or permitted to be filed in the High Court of Justice a false or misleading affidavit, and (*b*) that he had failed adequately to supervise his clerk. An inquiry was held and the Disciplinary Committee found that although neither of the allegations had been substantiated, the affidavit, which was the subject of the complaint, was prepared and filed by the clerk himself while his principal was absent from the office, and as a result of the disclosure of certain facts during the inquiry, an application was made to the Disciplinary Committee for an order under s. 16 (1) of the Solicitors Act, 1941, that no solicitor should employ the clerk without the written permission of the Society. The committee, after holding an inquiry, made the order in those terms. The clerk appealed on the ground that since the allegations against his principal had failed there was no act or default to which he could be a party and that, therefore, the committee could make no order against him.

LORD GODDARD, C.J., delivering the judgment of the court, said that it must first appear to the Society that a clerk had been a party to such an act or default of a solicitor as to be the ground of an application or complaint against the solicitor. It was plain on this point that there was a *prima facie* case to answer. Next, the act complained of was the preparation and filing of the affidavit, which must be regarded as the act of the solicitor who was the solicitor on the record. It was not disputed that the clerk was the actual person who prepared and filed the affidavit and knew that it was misleading. The solicitor escaped because he neither knew nor had means of knowing the misleading character of the affidavit. But the section did not require that the solicitor should have been found guilty or punished before the clerk could be dealt with by the committee. Had the solicitor himself been guilty, it was admitted that the clerk could have been dealt with. It would be a strange result if, because the solicitor showed that he had no knowledge of what his clerk did, the clerk could escape. When it was found that a false affidavit had been filed, it was clear that an application could be made against the solicitor responsible. He might be able, as in the present case, to establish a defence. The clerk was a party to the act for which the solicitor would have to accept civil liability, if any resulted. There was therefore no doubt that the Society, who had learned of the clerk's action in the course of the inquiry regarding the solicitor, could take the proceedings authorised by the section. It appeared that the committee had considered that as they found the solicitor could not be held blameless, that was an act or default to which the clerk was a party, and that they found that the clerk was a party to his principal's failure properly to supervise him; that could not be right; failure to exercise supervision over a clerk was a failure on the part of the principal only, and the solicitor was acquitted of that charge. The result of the failure was that the clerk was able to do certain acts without the knowledge of his employer. That was the offence for which the clerk was liable to be dealt with by the committee. The order of the committee would be upheld, though on different grounds. Appeal dismissed.

APPEARANCES: *Neil Lawson*, Q.C., and *J. G. Wilmers* (*Paisner and Co.*); *J. R. Cumming-Bruce* (*Hempsons*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 547

Probate, Divorce and Admiralty Division

PRACTICE: INTERROGATORIES: DOCUMENTS LOST OR DESTROYED: POWER TO ALLOW

Ramsey *v.* Ramsey

Davies, J. 25th January, 1956

Summons (adjourned into court) for judgment.

The wife by her petition alleged that the husband deserted her in January, 1947, the parties having been married in June, 1946. In June, 1952, she gave birth to a child of which the husband was not the father and asked for the exercise of the court's discretion in her favour. In January, 1947, the wife had obtained an order on the ground of her husband's desertion; the order was revoked on the husband's application in August, 1952, on the ground that the wife had committed adultery. The issue in the suit was one of simple desertion. The wife alleged that the husband had left her in 1947 without cause. The husband alleged that she had driven him out, and, alternatively, that he had had just cause for leaving her. He stated in his answer that the justices' order had been discharged on the ground of the wife's adultery, but he merely asked that the prayer in the petition be rejected. There was, therefore, no issue of adultery in the suit: the sole issue was desertion. It was agreed between the respective solicitors that lists of documents should be supplied by each side, and in the husband's list of documents it was stated: "I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto." The second schedule referred to "letters petitioner to respondent, dates unknown. Letters respondent to petitioner. Dates unknown." The important part was "letters petitioner to

respondent. Dates unknown." Paragraph 4 read: "The last-mentioned documents were last in my possession or power, as to (*a*) the letters sent by me, on the date of posting of the same, and as to (*b*) the letters received by me, shortly after the date of receipt of the same when I burned them." It was on the statement that the husband had had, but no longer had, in his possession or power letters from his wife to him, which he had burned shortly after the receipt, that the present application and consequent order for interrogatories were made, namely: "(1) When did you receive from the [wife] the letters set forth in the second schedule on your list of documents, stating to the best of your ability the approximate date of each such letter? (2) How many such letters did you receive? (3) To the best of your recollection, what were the contents of each such letter?" The husband appealed from the order of the registrar. (*Cur. adv. vult.*)

DAVIES, J., stated the facts and, referring to a request which he had received from counsel, after argument in chambers, to mention a further point before judgment, said that he (his lordship) took the view that when a summons was adjourned into open court it was always open to counsel on either side to make any further submission which he might wish to make. His lordship said that he was quite satisfied that there was power in the court in a proper case to allow interrogatories as to the contents of a non-existent document, i.e., "non-existent" in the sense of lost or destroyed; and *Wolverhampton New Waterworks* v. *Hawkesford* (1859), 5 C.B. (N.S.) 703, was authority for holding that if it was shown that a document was lost or destroyed, a party who had knowledge of its contents might be interrogated about its contents if he could have been asked the same question in court. If, on the other hand, there was no evidence that the document was lost or destroyed, then, just as secondary evidence of its contents would not be admissible in court, interrogatories were not permissible. As a corollary to that, the proper way to obtain evidence of the contents would seem to be (*a*) if the document was in the possession of the other party, by discovery in the ordinary way on affidavit of documents and notice to inspect, and (*b*) if it was in the possession of a third party, by taking the ordinary steps to obtain production by *subpœna duces tecum* or otherwise. In *Wolverhampton New Waterworks* v. *Hawkesford*, *supra*, it was made perfectly plain with regard to the documents which were no longer in existence that interrogatories should be allowed. But although such an order might be made in a proper case, the question was whether it ought to be made in the present case. There was on the pleadings no issue as to correspondence at all, although in a desertion case correspondence might be most material; and in many cases reference was made to letters, such as purported offers to resume cohabitation, in the pleadings. But this was not such a case, although the letters might be relevant in a general sense. "The legitimate use, and the only legitimate use, of interrogatories is to obtain from the party interrogated admissions of facts which it is necessary for the party interrogating to prove in order to establish his case; and if the party interrogating goes further, and seeks that which it is not incumbent on him to prove, although such matters may indirectly assist his case, the interrogatories ought not to be admitted," *per* A. L. Smith, L.J., in *Kennedy* v. *Dodson* [1895] 1 Ch. 334, 341. But the present case was one of simple desertion and it could not be said that it was necessary for the wife to prove the letters in establishing her case. There was also a point under R.S.C., Ord. 31, r. 2. Were these interrogatories necessary either for disposing fairly of the case or for saving costs? If the wife wrote a number of letters to her husband, as no doubt she did, she knew what she wrote in them; if she wanted to prove the contents of those letters she could say in the witness box what was in them; and although it might be handy for her to force the husband to set out affirmatively what he said was in the letters, if he gave inaccurate answers to the interrogatories, would he be less likely to give such answers in the box? What sort of benefit was the wife likely to derive from those interrogatories, and what saving of costs was likely to ensue if they were allowed? The answer was none; and he (his lordship) failed to see that they were necessary within the meaning of R.S.C., Ord. 31, r. 2. Appeal allowed.

APPEARANCES: *D. Tolstoy* (*Whitlamsmith, The Law Society Divorce Department*); *J. Fox Andrews* and *B. R. O. Carter* (*Walter Jennings & Son*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 542**

Court of Criminal Appeal

CRIMINAL LAW: ADMISSION OF FRESH EVIDENCE ON HEARING OF REFERENCE BY HOME SECRETARY

R. *v.* Sparkes

Lord Goddard, C.J., Cassels, Lynskey, Donovan and Havers, JJ.
23rd April, 1956

Reference by the Home Secretary.

The petitioner was convicted together with one, *B*, of conspiring between March and November, 1950, with *M* and other persons unknown to break and enter a dwelling-house and steal jewellery, and of breaking and entering that dwelling-house on 5th November, 1950, and stealing jewellery. At the trial *M* gave evidence of meetings which he had with the petitioner and *B* on occasions in August, September and early October, 1950, and he said that the petitioner, he thought in September, had suggested that he should assist them to steal the jewellery by giving certain information; *M* also said that he had had a meeting with the petitioner and *B* a week before the robbery, and that on the evening of 4th November he had, by arrangement with the petitioner and *B*, unfastened a catch on a bedroom window in the dwelling-house. The petitioner, alleging that his passport, in force in 1950, showed that he had been absent from the country between 13th July and 19th October, 1950, petitioned the Home Secretary, contending that, had the passport been before the jury at the trial, it would have shown the evidence of *M* to be untrue in a material matter and he might well have been acquitted. The Home Secretary referred the case to the Court of Criminal Appeal under s. 19 (*a*) of the Criminal Appeal Act, 1907. The petitioner's passport had, in fact, been available at the trial, but had not been called for by the petitioner, nor was it suggested by him that he was abroad during the summer of 1950. At the hearing of the reference the petitioner gave no acceptable reason for his failure to mention at the trial that he had been abroad, and objection was taken by the Crown to the admission of the passport as evidence on the ground that on such a reference the court should follow the same procedure as on an ordinary appeal and that, therefore, its reception as fresh evidence was precluded by the rule of practice that the court would not receive fresh evidence unless it was shown that it had not been available at the trial.

DONOVAN, J., reading the judgment of the court, referred to the evidence of *M* and said that the petitioner had admittedly met *B* and *M* a week prior to the robbery. Even, therefore, had the jury concluded that *M* had been mistaken in his somewhat tentative recollection of earlier dates, they might well have concluded (and the court thought probably would) that he was telling the truth when he gave that detailed and circumstantial account of the meeting, and of other events, very shortly before the theft, a meeting which the appellant did not deny though he put the date of it a week earlier. In the face of that evidence it was impossible to say that if *M* had been shown to be wrong in his reference to meetings in August or September, the jury would or might have acquitted the appellant. As to the Crown's objection to the admission of the passport as fresh evidence, his lordship referred to *R.* v. *McGrath* [1949] 2 All E.R. 495 and *R.* v. *Collins* (1950), 34 Cr. App. R. 146, and said that no general rule was to be deduced from the precedents. On the one hand it might well be undesirable to stultify such a reference by the Home Secretary at the outset by a refusal to receive evidence which was available at the trial. On the other hand, it was clearly undesirable to encourage astute criminals dishonestly to by-pass the court after conviction in the hope that fresh evidence, genuine or otherwise, might be got before the court as the result of a petition to the Home Secretary, and a reference on the matter by him to the court. Each case, therefore, must be decided upon its merits, though the court would not treat itself as bound by the rule of practice if there was reason to think that to do so might lead to injustice or the appearance of injustice. In the present case the court had thought it better to look at the agreed schedule of entries in the appellant's passport, lest the impression might arise that a review of his case had been refused for a reason which was merely procedural. The appeal constituted by the reference would be dismissed.

APPEARANCES: *Sebag Shaw* (*Irwin Shaw*); *Sir Reginald Manningham-Buller*, Q.C., A.-G., and *J. C. Phipps* (*Director of Public Prosecutions*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 505**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

Progress of Bills

Read First Time :—

British Transport Commission (No. 2) Bill [H.C.] [3rd May.
Local Government Street Works (Scotland) Bill [H.C.] [1st May.
Occasional Licences and Young Persons Bill [H.C.] [1st May.

Read Second Time :—

Bedford Corporation Bill [H.C.] [3rd May.
Bournemouth–Swanage Motor Road and Ferry Bill [H.C.] [1st May.
Grayson, Rollo and Clover Docks Bill [H.L.] [2nd May.
Mersey Docks and Harbour Board Bill [H.L.] [2nd May.
Scottish Union and National Insurance Company Bill [H.C.] [3rd May.
Sugar Bill [H.C.] [1st May.
Transport (Disposal of Road Haulage Property) Bill [H.C.] [1st May.

Read Third Time :—

Justices of the Peace Act, 1361 (Amendment) Bill *now* Magistrates' Courts (Appeals from Binding Over Orders) Bill [H.C.] [1st May.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time :—

London County Council (Money) Bill [H.C.] [30th April.

Read Third Time :—

British Transport Commission (No. 2) Bill [H.C.] [3rd May.
City of London (Various Powers) Bill [H.L.] [3rd May.
Tees Conservancy Bill [H.L.] [30th April.

In Committee :—

Restrictive Trade Practices Bill [H.C.] [3rd May.

B. Questions

Requisitioned Premises (Invited Tenancies)

Mr. Duncan Sandys said that of 37,000 owners to whom formal invitations had been sent, 14,000 had already agreed to grant statutory tenancies to their licensees. [1st May.

Premium Bonds (Trust Funds)

Asked whether, in the event of trust funds purchasing Premium Bonds, any prizes which might accrue could be enjoyed tax-free by the life tenant, or whether it would be necessary for the prize to be treated as capital and revert to the trust, Mr. Macmillan replied that this was a point to be considered, but it would be premature to express an opinion when the terms of the security had yet to be decided. In any particular case the terms of the trust in question would, of course, also be relevant. [1st May.

Public Trustee's Office (Report)

The Attorney-General said that the Lord Chancellor had now considered the Report of Sir Maurice Holmes's Committee on the Office of the Public Trustee. The Government agreed with most of the recommendations, but not that the office should be financed partly by means of an Exchequer grant. It had been decided to close the Manchester Office, and in due course legislation would be introduced to improve the method of charging fees. [2nd May.

Income Tax (School Fees)

Mr. H. Brooke said that he was advised that grants by business undertakings to their employees for private school fees were normally assessable to tax as emoluments of the employee. [3rd May.

Mr. H. Brooke said that he was advised that for tax purposes payments by a firm of the school fees of a selected number of its employees would normally be expenses wholly and exclusively laid out for the purposes of the firm's trade, and would accordingly be admissible as a deduction in computing trading profits. [3rd May.

STATUTORY INSTRUMENTS

Board of Inquiry (Army) Rules, 1956. (S.I. 1956 No. 630.) 6d.
Clergy Pensions (Channel Islands) Order, 1956. (S.I. 1956 No. 620.)
Coal Distribution (Restriction) Direction, 1956. (S.I. 1956 No. 629.)
Coal Industry (Workmen's Compensation Liabilities) (Compensation Trusts) Order, 1956. (S.I. 1956 No. 623.) 5d.
Coal Mines Regulation (Suspension) Order, 1956. (S.I. 1956 No. 622.)
Colonial Air Navigation (Amendment) Order, 1956. (S.I. 1956 No. 615.) 5d.
Defence Regulations (Isle of Man) Order, 1956. (S.I. 1956 No. 621.)
Dentists Act, 1956 (Appointed Day) Order, 1956. (S.I. 1956 No. 624 (C. 1).)
Double Taxation Relief (Taxes on Income) (Federation of Rhodesia and Nyasaland) Order, 1956. (S.I. 1956 No. 619.) 8d.
Emergency Powers (Nigeria) Order in Council, 1956. (S.I. 1956 No. 616.)
Flax and Hemp Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1956. (S.I. 1956 No. 635.) 6d.
Foreign Compensation (Poland) (Debts) Order, 1956. (S.I. 1956 No. 617.) 6d.
Foreign Compensation (Poland) (Nationalisation Claims) Order, 1956. (S.I. 1956 No. 618.) 8d.
Gloucester (Amendment of Local Enactment) Order, 1956. (S.I. 1956 No. 633.)
Iron and Steel Scrap Order, 1956. (S.I. 1956 No. 631.) 11d.
Local Government (Payment of Grants, etc.) (Scotland) Regulations, 1956. (S.I. 1956 No. 646 (S. 30).) 5d.
London-Bristol Trunk Road (Newbury East-West Relief Road) Order, 1956. (S.I. 1956 No. 613.)
Merchant Shipping (Life-Saving Appliances) (Amendment) Rules, 1956. (S.I. 1956 No. 645.) 6d.
Notification of Vacancies (Revocation) Order, 1956. (S.I. 1956 No. 649.)
Port Glasgow Water Order, 1956. (S.I. 1956 No. 625 (S. 29).)
Railway (Standardisation of Electrification) (Revocation) Order, 1956. (S.I. 1956 No. 614.)
Rating Appeals (Local Valuation Courts) Regulations, 1956. (S.I. 1956 No. 632.) 5d.

These regulations, which came into operation on 1st May, replace the similarly named regulations of 1949 and now constitute the code of procedure governing rating appeals to local valuation courts. The 1949 regulations continue, however, to apply to appeals arising out of proposals to alter the valuation lists in force immediately before 1st April, 1956.

Retail Bespoke Tailoring Wages Council (Scotland) Wages Regulation Order, 1956. (S.I. 1956 No. 636.) 8d.
Retail Newsagency, Tobacco and Confectionery Trades Wages Council (England and Wales) Wages Regulation Order, 1956. (S.I. 1956 No. 627.) 11d.
Retention of Cable under Highway (Wiltshire) (No. 1) Order, 1956. (S.I. 1956 No. 609.)
Retention of Cables, Mains and Pipes under Highways (Norfolk) (No. 1) Order, 1956. (S.I. 1956 No. 637.)
Stopping up of Highways (Bristol) (No. 5) Order, 1956. (S.I. 1956 No. 596.)
Stopping up of Highways (Buckinghamshire) (No. 4) Order, 1956. (S.I. 1956 No. 597.)
Stopping up of Highways (Gloucestershire) (No. 10) Order, 1956. (S.I. 1956 No. 598.)
Stopping up of Highways (Leeds) (No. 2) Order, 1956. (S.I. 1956 No. 638.)
Stopping up of Highways (Leicestershire) (No. 6) Order, 1956. (S.I. 1956 No. 599.)
Stopping up of Highways (Leicestershire) (No. 7) Order, 1956. (S.I. 1956 No. 600.)
Stopping up of Highways (London) (No. 16) Order, 1956. (S.I. 1956 No. 639.)

Stopping up of Highways (Middlesex) (No. 3) Order, 1956. (S.I. 1956 No. 601.)
Stopping up of Highways (Nottinghamshire) (No. 1) Order, 1956. (S.I. 1956 No. 602.)
Stopping up of Highways (Pembrokeshire) (No. 2) Order, 1956. (S.I. 1956 No. 610.)
Stopping up of Highways (Plymouth) (No. 3) Order, 1956. (S.I. 1956 No. 603.)
Stopping Up of Highways (Portsmouth) (No. 3) Order, 1956. (S.I. 1956 No. 604.)
Stopping up of Highways (Sheffield) (No. 3) Order, 1956. (S.I. 1956 No. 605.)
Stopping up of Highways (Sheffield) (No. 4) Order, 1956. (S.I. 1956 No. 606.)
Stopping up of Highways (West Riding of Yorkshire) (No. 5) Order, 1956. (S.I. 1956 No. 611.)
Stopping up of Highways (West Riding of Yorkshire) (No. 7) Order, 1956. (S.I. 1956 No. 607.)
Stopping up of Highways (Wiltshire) (No. 2) Order, 1956. (S.I. 1956 No. 612.)

Supreme Court Funds Rules, 1956. (S.I. 1956 No. 647 (L. 9).)

Teachers' Superannuation (Approved External Service) Revoking Rules, 1956. (S.I. 1956 No. 634.)

Telephone Amendment (No. 2) Regulations, 1956. (S.I. 1956 No. 640.) 6d.

Draft **Victoria Tower** Gardens Regulations, 1956. 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Miscellaneous

DEVELOPMENT PLAN

WEST SUSSEX COUNTY COUNCIL

SHOREHAM AND LANCING BEACHES DEVELOPMENT PLAN

Notice is hereby given that proposals for alterations and additions to the above development plan were on 23rd April, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the under-mentioned districts : —

Shoreham-by-Sea Urban District.
Worthing Rural District.

A certified copy of the propoals as submitted has been deposited for public inspection at the County Hall, Chichester. Certified copies of the proposals so far as they relate to the under-mentioned districts have also been deposited for public inspection at the places mentioned below :—

Shoreham-by-Sea Urban District, Town Hall, Shoreham-by-Sea.

Worthing Rural District, 15 Mill Road, Worthing.

The copies of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10 a.m. and 4 p.m., Saturday 10 a.m. and 12 noon. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 9th June, 1956, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the West Sussex County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

The second part of the article Res Ipsa Loquitur (p. 330, *ante*) is unavoidably held over and will appear next week.

CORRECTION

Denning, L.J., dissented from the majority decision of the Court of Appeal (since reversed by the House of Lords) in *Goodrich* v. *Paisner*, which was not, therefore, unanimous, as stated at p. 305, *ante*.

CASES REPORTED IN VOL. 100

24th March to 12th May, 1956

For cases reported up to and including 17th March, see *ante*, p. 212.

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